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REVISED CODES OF MONTANA

VOLUME 1
Part 1
1973 Cumulative Pocket Supplement

Containing

THE 1972 CONSTITUTION OF THE STATE OF MONTANA AND AMENDMENTS TO PROVISIONS AND NEW PROVISIONS APPROVED SINCE PUBLICATION OF REPLACEMENT VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1 (PART 1) THROUGH VOLUME 478, PACIFIC REPORTER (2ND SERIES)

AND

PARALLEL REFERENCE TABLES SUPPLEMENTING REPLACEMENT VOLUME 1 (PART 1)

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

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CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14

1. * * * [Same as parent volume.]

2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3 to 5. * * * [Same as parent volume.]

Compiler's Notes

Section 2 of Amendment 14 is printed above to correct a typographical error in the parent volume by substituting "excluding" for "including" in the first sentence.

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

AMENDMENT 25

1. In case of the removal of the president from office or of his death or resignation, the vice-president shall become president.

2. Whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both houses of congress.

3. Whenever the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the vice-president as acting president.

4. Whenever the vice-president and a majority of either the principal officers of the executive departments or of such other body as congress may by law provide, transmit to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office, the vice-president shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the vice-president and a majority of either the principal officers of the executive department or of such other body as congress may by law provide, transmit within four days to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office. Thereupon congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the congress, within twenty-one days after receipt of the latter written declaration, or, if congress is not in session, within twenty-one days after congress is required to assemble, determines by two-thirds vote of both houses that the president is unable to discharge the powers and duties of his office, the vice-president shall continue to discharge the

same as acting president; otherwise, the president shall resume the powers and duties of his office.

The twenty-fifth amendment was submitted by Congress on July 7, 1965, declared in force February 23, 1967.

AMENDMENT 26

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. The Congress shall have the power to enforce this article by appropriate legislation.

The twenty-sixth amendment was submitted by Congress on January 21, 1971, declared in force July 5, 1971.

THE ENABLING ACT

§ 1. * * *

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

§ 4. * * *

Crime on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State v. Danielson, 149 M 438, 427 P 2d 689.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars ($10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars ($5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for

the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE. — This section given as last amended by an act of Congress, June 30, 1967, 81 Stat. at L. 106.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

§ 25. * * *

Compiler's Note

A note under this section in the parent volume refers to an act of congress, ch. 183, 62 Stat. at L. 170. The correct date of the act is April 13, 1948, not 1949 as shown in the parent volume.

1889

CONSTITUTION

OF THE

STATE OF MONTANA

[Replaced by the 1972 Constitution, effective July 1, 1973]

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited in Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 3.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P 2d 902.

Statutes Invalid under This Provision

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts, rather than on profits, it could have deprived contractors of their right to engage in business as protected by the provisions of this section. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sections 1-829 to 1-832, imposing a tax on each passenger enplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an unreasonable and undue discrimination. Northwest Airlines, Inc. v. Joint City-County Airport Board, 154 M 352, 463 P 2d 470.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

Sec. 6.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; Tooker v. State, 147 M 207, 410 P 2d 923.

Sec. 7.

Description in Search Warrant

Evidence obtained in a search of defendant's home was properly used to convict the defendant of grand larceny, even though the items seized were not specifically described in the search warrant pursuant to which the search and seizure was conducted. State v. Gray, 152 M 145, 447 P 2d 475.

Probable Cause

Where affidavit for search warrant merely stated that affiant had knowledge and believed that designated articles taken in burglary were located on the premises but contained no facts for judicial determination, probable cause was not established. Application of Gray, 155 M 510, 473 P 2d 532.

Where affidavit for search warrant did not establish probable cause, the search warrant was illegally issued and void, and the admission as evidence of the fruits of the search was prejudicial error. Application of Gray, 155 M 510, 473 P 2d 532.

Sufficiency of Affidavit

Additional information besides that contained in affidavit for search warrant could not be used to uphold its issuance, since the affidavit itself is required to provide exclusive support for issuance of search warrant. Application of Gray, 155 M 510, 473 P 2d 532.

Telephone Communications

It was a violation of the right of privacy guaranteed by this section for wife's sister to listen on an extension, unknown to husband, to telephone conversation between husband and wife, and sister's testimony as to threat made by husband during the conversation was inadmissible in prosecution of husband for wife's murder. State v. Brecht, 157 M 264, 485 P 2d 47.

When Rights May Be Waived

Where defendant admitted a sheriff, a deputy sheriff, and two livestock inspectors onto his ranch on three separate occasions to inspect his calves, and helped them to corral the animals, he waived his constitutional right against unreasonable search and seizure by consenting to the actions of the state authorities. State v. Peters, 146 M 188, 405 P 2d 642.

Constitutional rights of defendant convicted of grand larceny of cattle were not violated by evidence of worked-over brands given by witnesses privileged to travel on open range on which defendant had mere nonexclusive license to graze cattle and further evidence obtained while removing cattle in vicinity of defendant's home with defendant's consent. State v. Johnson, 149 M 173, 424 P 2d 728.

Sec. 8.

Necessity for Indictment

Charges made by information filed after hearing before magistrate, or by leave of district court are sanctioned by statute and constitution and defendant may be held to answer, even for capital crime, without presentment or indictment by grand jury. State v. Corliss, 150 M 40, 430 P 2d 632, certiorari denied, 390 US 961, 88 S Ct 1063.

Complaint in a justice court, rather than indictment, was proper on charge of misdemeanor of obtaining money by false pretenses. Petition of Brown, 150 M 483, 436 P 2d 693.

Preliminary Hearing

Grant of leave to file information directly, without preliminary hearing, was neither error nor abuse of statutory priv-

ilege to bypass preliminary hearing, where motion to file directly was supported by affidavit and where preliminary hearing would have served no purpose. State v. Johnson, 149 M 173, 424 P 2d 728.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; Petition of Jones, 146 M 305, 405 P 2d 978; Petition of Evans, 146 M 405, 409 P 2d 456; Tooker v. State, 147 M 207, 410 P 2d 923.

Sec. 9.

Forfeiture of Estate

Prohibiting wife who plead guilty to voluntary manslaughter in death of her husband from taking of his estate by intestate succession or dower, and from taking his share of jointly owned property, and making her a constructive trustee of that property for the benefit of beneficiaries and devisees under her husband's will, did not violate this section. Sikora v. Sikora, — M —, 499 P 2d 808.

Sec. 10.

Freedom of Speech

Bank president's statement that he was displeased with verdict against bank and that jurors could not expect to do business with bank was valid exercise of free speech under this section, since statement was made 22 days after final disposition of case and since court of which jury is a part is not above individual criticism after case is disposed of. State ex rel. Polish v. District Court of Third Judicial District in and for County of Powell, 156 M 220, 478 P 2d 270.

Sec. 11.

Ex Post Facto Application

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. State ex rel. Nelson v. Ellsworth, 142 M 14, 380 P 2d 886.

General saving clause, section 43-514, interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, absent an express legislative intent to contrary contained in repealing act, does not violate this section as constituting ex post facto legislation. State ex rel. Huffman v. District Court, 154 M 201, 461 P 2d 847.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 918.

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 35.

Sec. 14.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after the announcement, he was allowed no recovery under this section as no property was actually taken or damaged by the state. Bakken v. State Highway Commission, 142 M 166, 382 P 2d 550.

Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. Colarchik v. Watkins, 144 M 17, 393 P 2d 786.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section. State v. Peterson 134 M 52, 328 P 2d 617, 620.

An owner may testify as to the reasonable value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. Alexander v. State Highway Commission, 142 M 93, 381 P 2d 780, distinguished in 142 M 256, 260, 384 P 2d 770; State Highway Commission v. Keneally, 142 M 256, 384 P 2d 770.

Where there was conflicting testimony as to amount of damage to plaintiff's land after condemnation by state of part of that land, jury's finding as to amount of damage for the injury done was not so excessive as to be a violation of this section providing for just compensation. State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274.

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by this section. State Highway Commission v. Woodcock, 147 M 291, 411 P 2d 357.

Where condemnee's house was between fifty and sixty years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. State Highway Commission v. Tubbs, 147 M 296, 411 P 2d 739.

Where amount of just compensation as determined by jury is based on credible evidence as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. State Highway Commission v. Vaughan, 155 M 277, 470 P 2d 967.

Municipal Property

Property held by city is defined by sec. 93-9904 as private property and, when, taken by state for more necessary public use, must be paid for in same manner as if taken from a private owner. City of Three Forks v. State Highway Commission, 156 M 392, 480 P 2d 826.

Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and require the state to pay into court the amount of damages prayed for in the complaint. State ex rel. State Highway Commission v. District Court, 142 M 198, 383 P 2d 481.

Trespass Damages

Where state took city property without first paying just compensation, it waived its sovereign immunity, and measure of damages properly included trespass damages. City of Three Forks v. State Highway Commission, 156 M 392, 480 P 2d 826.

References

Cited or applied in Neil v. Lewis and Clark County, 133 M 323, 323 P 2d 270, 273.

Sec. 15.

Previously Acquired Rights

Mandamus to compel fish pond licensee, in compliance with later statute, to construct fish ladder on diversion dam installed seven years before with approval of commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. Paradise Rainbows v. Fish and Game Commission, 148 M 412, 421 P 2d 717.

Rights-of-Way of Necessity

There can be implied reservations or implied grants of easement by necessity in Montana. Thisted v. Country Club Tower Corp., 146 M 87, 103, 405 P 2d 432, overruling Herrin v. Sieben, 46 M 226, 127 P 323; Violet v. Martin, 62 M 335, 205 P 221 and Simonson v. McDonald, 131 M 494, 311 P 2d 982, 984.

Sec. 16.

Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to a "farce or a sham." State v. Noller, 142 M 35, 381 P 2d 293.

Discharge of Court-appointed Counsel

Where court-appointed counsel failed to advise clerk's office as to what would be required for record on appeal from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal under former section 94-4806 and the cause was remanded to the district court for revocation of appointment of counsel and appointment of competent and effective counsel to prosecute the appeal properly. State v. Bubnash, 139 M 517, 366 P 2d 155, 158.

Where defendant charged with burglary was granted the services of court-appointed counsel under former section 94-4806, he did not have the right to discharge such counsel unless he was able to provide counsel at his own expense or desired to undertake his own defense. However, upon a proper showing, such counsel could be discharged by the trial court. Peters v. State, 139 M 634, 366 P 2d 158.

Impartial Jury

District court did not abuse its discretion in denying defendant's motion for change of venue with leave to renew after trial jury was selected, where affidavits and testimony were inconclusive as to existence of county-wide bias and prejudice against defendant, and where motion was not renewed at time jury was finally selected. State v. Logan, 156 M 48, 473 P 2d 833.

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to defense of insanity, for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. State v. Olson, 156 M 339, 480 P 2d 822.

Section 95-1506, subsection (d), which authorizes judges to consider and to determine validity of prior conviction before imposing sentence under increased sentence law does not unconstitutionally deprive accused of right to jury trial. Newman v. Estelle, 156 M 502, 484 P 2d 276, certiorari denied, 404 US 966, 30 L Ed 2d 285, 92 S Ct 341.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the questions presented on appeal because defendant had no voice in the appointment of counsel. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

Presumption of Innocence

Instruction that while mere unexplained possession of stolen property was not sufficient to justify conviction, one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt, did not deprive defendant of presumption of innocence. State v. Gray, 152 M 145, 447 P 2d 475.

Right of Accused To Meet Witnesses against Him Face to Face

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under former section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court." Kuhl v. District Court, 139 M 536, 366 P 2d 347.

The right to confrontation is not an absolute one, and may be circumscribed by the right to take depositions as provided for in section 17, article III of the Montana constitution. Tooker v. State, 147 M 207, 410 P 2d 923.

Right To Appear and Defend in Person

A defendant's constitutional and statutory right to be present at trial does not encompass proceedings before the court involving matters of law, but only where the jury is hearing his cause or where his presence is essential to a fair and just determination of a substantial issue. State v. Peters, 146 M 188, 405 P 2d 642.

This provision and former section 94-7004, requiring the presence of a defendant at trial, do not require that the defendant be present at a hearing on a motion for a new trial because such a hearing is held after the verdict has been rendered and is not part of the trial. State v. Peters, 146 M 188, 405 P 2d 642.

Right to Counsel

Indigent defendant's right to counsel does not encompass right to counsel of

his choice; unless there is good cause shown why the court's appointment should not have been made, indigent defendant must accept attorney selected by court or waive right to be represented by counsel. State v. Forsness, — M —, 495 P 2d 176.

Where counsel appointed by court with defendant's approval effectively represented defendant for several weeks before trial, including securing postponements and filing of several motions, then defendant sought to discharge counsel the day before trial and have new counsel appointed, there was no denial of right to counsel in court's refusal to permit counsel to withdraw, thus forcing defendant to proceed to trial with appointed counsel. State v. Forsness, — M —, 495 P 2d 176.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. State v. Hollywood, 138 M 561, 358 P 2d 437, 444.

Right to Speedy Trial

Convicted forger's right to a speedy trial was not violated by delaying the trial until the defendant had been paroled from the state prison. State v. Mielke, 148 M 320, 420 P 2d 155, 157.

In determining whether right to speedy trial had been violated for purposes of constitution and statute requiring dismissal of action if not brought to trial within six months after filing of information, court would count only days of delay which had not been caused by defendants, sum total of which was less than six months, notwithstanding that more than six months had passed since filing of information. State ex rel. Thomas v. District Court, Thirteenth Judicial District, 151 M 1, 438 P 2d 554.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362; State v. Moran, 142 M 423, 384 P 2d 777; Petition of Ditton, 145 M 594, 403 P 2d 205.

Sec. 17.

Right To Confront Witnesses

This provision, allowing for the taking of depositions, does not violate section 16, article III of the Montana constitution, which provides for the right to confrontation, and depositions taken under authority of this provision are admissible at trial upon a showing that the witness is either dead or not within the jurisdiction. Tooker v. State, 147 M 207, 410 P 2d 923.

Sec. 18.

Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. State v. Moore, 138 M 379, 357 P 2d 346, 347.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was no violation of state or federal constitutional prohibitions. State v. Boe, 143 M 141, 388 P 2d 372.

Imprisonment imposed as a punishment under a valid judgment and sentence in a criminal prosecution places the defendant once in jeopardy within the ambit of this section. In re Williams' Petition, 145 M 45, 399 P 2d 732.

Jeopardy, as applied to double punishment in the constitutional sense, requires punishment imposed as such and for that purpose and has no application to probationary rules placing reasonable restraints on a person's actions and conduct for the purpose of his rehabilitation. In re Williams' Petition, 145 M 45, 399 P 2d 732.

Information in five counts, three of which alleged larceny of more than one cow, did not violate former jeopardy provision in that each count stated separate offense under grand larceny statute making theft of each animal separate and distinct offense and in view of further statute permitting information to charge more than one offense in separate counts. State v. Johnson, 149 M 173, 424 P 2d 728.

Statute providing for a penalty of $1,000 for any excess freight weight over 25,000 pounds is penalty in addition to other penalties provided by statute and violates neither double jeopardy provision of Constitution nor statute providing that when

action is punishable under different provisions of Code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, Eleventh Judicial District, 151 M 12, 438 P 2d 560.

Information charging drug offense was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. State ex rel. Offerdahl v. District Court, 156 M 432, 481 P 2d 338.

Defendant who had been acquitted on directed verdict in federal court of charge of assaulting FBI agent could not subsequently be prosecuted in state court for assault arising out of same transaction, even though basis for federal acquittal was failure to prove that victim was acting in performance of duties. State v. LeCoure, — M —, 491 P 2d 1228.

Self-Incrimination

A disbarment proceeding is not a criminal prosecution, but a special proceeding of a civil nature, and the court is not therefore precluded under former section 94-8803, from taking into consideration the accused's failure to be sworn in his own behalf. In re Wellcome, 23 M 450, 468, 59 P 445.

An instruction, submitted to the jury in a criminal case, embodying the provisions of former section 94-8803, which prohibited comment on defendant's failure to testify, was not open to the objection that it practically deprived accused of the presumption of innocence. State v. Farnham, 35 M 375, 89 P 728.

While it is the general rule that a court ought not in its instructions single out a particular witness and direct the attention of the jury to his testimony, former section 94-8803 made an exception to the rule, and the court could properly instruct that the jury, in judging the credibility of one on trial for a crime and the weight to be given to his testimony, could take into consideration the fact that he was the defendant, and the nature and enormity of the crime of which he stood charged. State v. De Lea, 36 M 531, 93 P 814.

Where defendant did not testify in his own behalf, an instruction in the words of former section 94-8803 that if defendant did testify, the jury, in judging of the credibility and weight of his testimony, could take into consideration the fact that he was the defendant and the nature and enormity of the crime, though unnecessary, was harmless. State v. Stevens, 60 M 390, 199 P 256; State v. Kessler, 74 M 166, 239 P 1000.

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. The cases of State v. Sparks, 40 M 82, 105 P 87 and State v. Willette, 46 M 326, 127 P 1013, to the extent they impose a burden to explain or testify concerning any charge of possessing stolen goods are overruled. State v. Greeno, 135 M 580, 342 P 2d 1052.

In prosecution for second-degree assault, court did not err in giving general instruction which prescribed standard by which jury might judge defendant's credibility as authorized by former section 94-8803. State v. Manning, 149 M 517, 429 P 2d 625.

Instruction that mere unexplained possession of stolen property was not sufficient to justify conviction but that one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt did not deprive defendant of his right to remain silent. State v. Gray, 152 M 145, 447 P 2d 475.

Conviction of petty larceny was reversed and new trial granted where prosecutor in final argument to jury made comment to jury which could only have been construed as reflecting prejudicially on defendant's failure to take stand and testify. State v. Hart, 154 M 310, 462 P 2d 885.

Portion of trial court's instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. State v. Branch, 155 M 22, 465 P 2d 821.

Prosecutor's statement to jury on voir dire that rape case has only two witnesses, the people involved, and that jury must weigh their respective testimony if defendant chooses to testify did not prejudice defendant's case by compelling him to testify contrary to his rights under this section. State v. Anderson, 156 M 122, 476 P 2d 780.

Involuntary nature of defendant's confession was not established under pre-Miranda criteria by findings that defendant was sixteen years old at the time, that the confession was made during in-custody interrogation, and that defendant was advised, before making any

admissions, that he could have a lawyer and did not have to say anything. State v. White, — M —, 490 P 2d 720.

Admission of evidence of crime discovered by lawful search incident to arrest for which there was probable cause did not compel defendant to be a witness against himself. State v. Harris, — M —, 498 P 2d 1222.

Sec. 19.

Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at $25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to $7,500 which was a very reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407, 408.

Capital Offenses

First-degree murder is a bailable capital offense except in cases where it has been shown that the proof is evident or the presumption great. State v. Zachmeier, 153 M 64, 453 P 2d 783.

Trial court abused its discretion in denying bail after reversal of conviction for first-degree murder and remand for new trial, where defendant offered evidence of good conduct while in prison, appeared for sentencing after release on bail for two weeks after guilty verdict in the first trial, made proof as to an amount of bail and its availability, and was not a security risk; transcript of first trial did not establish presumption of guilt sufficient to deny bail where conviction had been reversed for error committed without discussion of several issues, including sufficiency of the evidence. State ex rel. Warwick v. District Court, — M —, 500 P 2d 800.

Sec. 20.

Cruel and Unusual Punishment

Fourteen-year prison sentence with four years suspended, was not cruel and unusual punishment under this section or the eighth amendment to the United States Constitution on conviction of first-degree burglary where maximum prison sentence provided by statute was fifteen years. State v. Harris, — M —, 498 P 2d 1222.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1063.

References

Cited in State v. McLeod, 131 M 478, 311 P 2d 400, 407; Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

Sec. 23.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues of fact. Mahan v. Hardland, 147 M 78, 410 P 2d 156.

Deliberations of Jury

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus,

is the result of a fair expression of opinion by all the jurors. Schmoyer v Bourdeau, 148 M 340, 420 P 2d 316, 317.

Equitable Actions

In action to foreclose mortgage securing promissory notes, defendant was not entitled to jury trial as matter of right on his cross-complaint and counterclaim for damages, since actions for mortgage foreclosures are equitable and triable by court without jury and cannot be transformed into actions at law merely by raising an issue of law in answer. Citizens State Bank v. Duus, 154 M 18, 459 P 2d 696.

References

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113; Seibel v. Byers, 136 M 39, 344 P 2d 129, 139.

Sec. 24.

Penalty Assessment on Forfeited Bail and Fines

In so far as statute provided for penalty assessment on forfeited bail and on fines, it was void as violation of constitutional provision that laws for punishment of crime should be founded on principles of reformation and prevention. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Sec. 27.

Arbitrary Exercise of Licensing Power

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking of property without due process of law. State ex rel. Willumsen v. City of Butte, 135 M 350, 340 P 2d 535.

Criminal Appeals

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 31.

Discriminatory Tax

Sections 1-829 to 1-832, imposing a tax on each passenger emplaning on an air common carrier at a Montana airport, are repugnant to this section in creating an unreasonable and undue discrimination. Northwest Airlines, Inc. v. Joint City-County Airport Board, 154 M 352, 463 P 2d 470.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. Great Northern Railway Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058, and in 146 M 425, 407 P 2d 703, 706.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P 2d 902.

Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 869, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents

were not present, and when the testimony of that hearing was not spread on the record. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 864, certiorari denied, 380 US 909, 85 S Ct 891. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Insanity Determination

Commitment of patient to state hospital in civil proceeding, without a jury trial or benefit of counsel in face of protest to jurisdiction of judge on basis that he had previously sentenced patient to five-year prison sentence did not constitute violation of due process since patient had neither mentioned nor requested counsel or jury trial at time of hearing and since determination of sanity question was made by medical jurors and not by judge. Petition of Brown, 151 M 440, 444 P 2d 304.

Jury Trial

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to defense of insanity for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. State v. Olson, 156 M 339, 480 P 2d 822.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 918.

The former health district law (69-801 et seq.) does not violate this section. Bacus v. Lake County, 138 M 69, 354 P 2d 1056, 1058.

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 514.

Municipal Ordinances

A city ordinance which imposed a storm sewer service charge applicable to premises within the city limits did not violate this section. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 465.

Penalty Assessment on Bail

Statute providing for penalty assessment on bail violated due process clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Peremptory Writ

Peremptory writ of mandamus, issued after petitioners were unable to find respondent for service of an alternative writ, commanding the sheriff to bring respondent into court and to seize and deliver to the court certain books of account in respondent's possession, was void for lack of procedural due process or fundamental fairness. State ex rel. Nybo v. District Court, — M —, 492 P 2d 1395.

Right to Counsel

Petitioner was not denied his constitutional right to counsel under this section in that he was intoxicated when he received Miranda warning at time of arrest, since morning following his arrest he recalled having been warned of his rights upon arrest. Petition of Fitzpatrick, 154 M 512, 464 P 2d 507.

Right to Engage in Business

In Montana, every person has a right to operate a business, subject to the applicable laws of the state and ordinances of the city, and he may not be deprived of such property right without due process of law as guaranteed by this provision. State ex rel. Bennett v. Stow, 144 M 599, 399 P 2d 221.

Rural Fire Districts Law

Rural fire districts law, section 11-2008, before 1957 amendment, was unconstitutional as being in direct conflict with this section. Great Northern Railway Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. Ruona v. City of Billings, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Mon-

tana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

Where developers of trailer park had complied with state and city ordinances and had been granted a state license to operate the park, denial of a license by the city council for matters not contained in, nor required to be observed by the city health ordinance, thereby applying a different standard than that applied to others engaged in the same line of business, deprived developers of a property right without due process. State ex rel. Bennett v. Stow, 144 M 599, 399 P 2d 221.

Act providing for nonresident contractor's license fee (chapter 277, Laws of 1965), imposing a tax of one per cent of gross receipts in addition to a $25 license fee, was arbitrary and unreasonably discriminatory in that it taxed on the basis of gross receipts rather than on profits. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Where several jury members read newspaper article in jury room that defendant had pleaded guilty to a manslaughter charge arising out of the same events upon which the present suit for damages was brought, even though it was uncertain whether prejudicial or not and not read until after the verdict was rendered but before damages were established, error was inherently prejudicial and new trial was ordered. Putro v. Baker, 147 M 139, 410 P 2d 717.

Grazing district bylaw providing for an assessment against members owning or in control of livestock trespassing on district land did not violate this section where member at all times received timely notice of trespasses from district board, member was represented by counsel throughout hearing before district board and before state grass commission, and a complete record was made of all testimony and exhibits offered. Appeal of Two Crow Ranch, Inc., — M —, 494 P 2d 915.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. State v. Green, 143 M 234, 388 P 2d 362.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1064.

References

Cited in State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 973; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 29.

Taxation

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. State v. Toomey, 135 M 35, 335 P 2d 1051.

References

Cited in Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 279; Morgan v. Murray, 134 M 92, 328 P 2d 644, 653; Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 912; Seibel v. Byers, 136 M 39. 344 P 2d 129, 139; State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556; State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

Counties

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Former section 69-809 and the provisions of former section 69-813, relating to rules and regulations by health districts, violate this section by delegating legislative power to a board. Baeus v. Lake County, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. City of Missoula v. Missoula County, 139 M 256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; Doull v. Wohlschlager, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

Statutes Held Not To Violate This Provision

Section 93-901, dealing with disqualification of judges, does not violate the separation of powers provision of this section in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

References

Cited or applied in Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 912; Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

References

Cited or applied in Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 912.

Sec. 4.

Repeal

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

The portion of this provision which states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Sec. 7.

Constitutional Convention Delegates

Members of the legislature may not serve as delegates to state constitutional convention, since a delegate holds a civil office under the state. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Delegates to the 1972 constitutional convention are considered as representatives who are prohibited by this section from holding any other state office during the term for which elected. Mahoney v. Murray, — M —, 496 P 2d 1120.

The term of office of delegates to the 1972 constitutional convention extended to June 30, 1973, the date of repeal of the enabling act, despite the prior adjournment sine die of the convention, especially since the convention, when it adjourned, constituted a committee to carry on many of the functions of the convention. Mahoney v. Murray, — M —, 496 P 2d 1120.

Sec. 11.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 18.

Removal of State Officer

The provisions of section 59-405, that where the term of office is not fixed by law the office is held at the pleasure of

the appointing power, do not violate this section. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

Sec. 20.

References

Cited in Morgan v. Murray, 134 M 92, 328 P 2d 644, 654.

Sec. 22.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 23.

Acts Not Violating this Provision

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional requirements for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. Van Tighem v. Linnane, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. Parker v. County of Yellowstone, 140 M 538, 374 P 2d 328, 334.

The title of the Minimum Wage Act (41-2301 to 41-2307) conforms to this section. City of Billings v. Smith, — M —, 490 P 2d 221.

Deceptive Title

Where title to appropriation bill described an appropriation to carry out provision of specific statutory law and then proceeded to nullify and defeat mandatory and all-inclusive character of that specific statutory law without reference thereto in title, latter provision was deceptive and misleading in violation of this section and therefore void. City of Helena v. Omholt, 155 M 212, 468 P 2d 764.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. State v. Rice, 134 M 265, 329 P 2d 451, 453.

Incomplete Title

Dredge Mining Regulation and Land Preservation Act (former secs. 50-1101 to 50-1114) was repugnant to this section, in that it purported to regulate sluice washing without mentioning sluice washing in its title. Sigety v. State Board of Health, 157 M 48, 482 P 2d 574, distinguished in — M —, 490 P 2d 221, 226.

The 1971 amendment of section 11-1202 was void in so far as it appeared to delete a final paragraph excluding certain types of contracts from the bidding requirements of that section, because the title described the amendment as only an "Increase of Dollar Limitations on Bid Requirements." Morrison-Maierle, Inc. v. City of Forsyth, — M —, 500 P 2d 395.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, containing more than one subject, violated this section. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Penalty Assessment on Bail

In so far as statute provided for penalty assessment on forfeited bail and on fines it was void as a violation of the constitutional provision that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Sec. 24.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 26.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. Trudgen v. Trudgen, 134 M 174, 329 P 2d 225, 232.

Interest on Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. B-W Acceptance Corp. v. Torgerson, 234 F Supp 214, 216.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. State ex rel. James v. Aronson, 132 M 120, 314 P 2d 849, overruling State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), requiring the deduction of workmen's compensation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutionally discriminatory in treating totally disabled employees less favorably than those only partially disabled. State ex rel. Morgan v. White, 136 M 470, 348 P 2d 991.

Small Tract Financing Act's three-acre classification was not special legislation favoring rural landowners; it was reasonable in that it fostered development of state, added to its prosperity and treated all those within class equally. Great Falls Nat. Bank v. McCormick, 152 M 319, 448 P 2d 991.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 29.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 35.

Sec. 30.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 31.

Constitutionality

Prohibition against increase or diminution of salary or emolument of public officer after election or appointment does not violate equal protection clause of U. S. Constitution. Shubat v. State, 157 M 143, 484 P 2d 278.

County Officers

County officers elected or appointed before enactment of the 1969 amendment to the formula salary law (25-605) were not entitled during their then current terms to raises in salaries or emoluments therein provided. Shubat v. State, 157 M 143, 484 P 2d 278.

Sec. 32.

Construction

This section refers to the raising of money for defraying the expenses of the general government. Morgan v. Murray, 134 M 92, 328 P 2d 644, 648.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. Morgan v. Murray, 134 M 92, 328 P 2d 644, 648.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes for local purposes are not bills for "raising revenue" within the meaning of this section. Morgan v. Murray, 134 M 92, 328 P 2d 644, 649.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. Morgan v. Murray, 134 M 92, 328 P 2d 644, 654.

Sec. 34.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 920.

Sec. 35.

Laws Not Violating This Provision

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M 381, 480 P 2d 181.

Laws Violating This Provision

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

Voter Education

Any power and authority a constitutional convention may possess to receive and expend public funds for voter education purposes must be exercised by the convention itself and may not be delegated to a committee. State ex rel. Kvaalen v. Graybill, — M —, 496 P 2d 1127.

Sec. 36.

Laws Not Violating This Provision

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so taxed. Parker v. County of Yellowstone, 140 M 538, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 515, 516.

Sec. 39.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 36.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366; United States v. Christensen, 218 F Supp 722, 729.

Sec. 40.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

Sec. 45.

Repeal

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Sec. 46. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

(1) Section 3, Article X, seat of state government.
(2) Section 2, Article XVI, seat of county governments.
(3) Section 16, Article VII, succession to governor.
(4) Section 4, Article XVI, vacancy on board of county commissioners.
(5) Section 6, Article XVI, other vacancies in county government.
(6) Section 45, Article V, vacancies in legislative assembly.
(7) Section 11, Article VII, special legislative sessions.
(8) Section 5, Article V, length of legislative session.
(9) Section 10, Article V, quorum to do business in each house.
(10) Section 6, Article XIX, location of county offices.
(11) Section 1, Article VII, duties of executive officers of state.
(12) Section 7, Article VII, appointments by governor.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

ARTICLE VI—APPORTIONMENT AND REPRESENTATION

Sec. 1.

Reapportionment

Congressional districting under chapter 44 of the Laws of 1917 (43-107) was unconstitutional where legislature had failed in three successive sessions following the 1960 census to redistrict and where the two districts then existing showed a disparity in population of 126,332 persons. Roberts v. Babcock, 246 F Supp 396.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legisla-

tive assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

Compiler's Notes

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

Constitutional Convention

The 1972 constitutional convention had to be apportioned on basis of 1970 census applicable to apportionment of house of representatives to be elected in November 1972. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Reapportionment

Where legislature failed to reapportion congressional districts in three successive sessions following the 1960 census in conformity with this provision and districts under chapter 44 of the Laws of 1917 (43-107) had a disparity in population of 126,332, governor and secretary of state were enjoined from proclaiming, certifying or conducting election of members of the house of representatives and court established new districts for future elections. Roberts v. Babcock, 246 F Supp 396.

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.

Compiler's Notes

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

DECISIONS UNDER FORMER PROVISIONS

Reapportionment

The provision of former section that "no county shall be divided in the formation of representative districts" was valid since it did not conflict with the equal protection clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Secs. 4 to 6.

Repeal

These sections were repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth amendment of the constitution of the United States. Herweg v. Thirty Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

Attorney General—Duties and Powers of

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to represent the Mountain Highway Com-

mission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. Woodahl v. State Highway Commission, 155 M 32, 465 P 2d 818.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 931.

Sec. 4.

Constitutional Convention Delegates

State officers named in this section may not serve as delegates to state constitutional convention, since a delegate holds public office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Sec. 8.

Cross-References

Examiner as head of department of business regulation, sec. 82A-401.

Functions retained by examiner after reorganization, sec. 82A-903(3).

Functions retained by state examiner, sec. 82A-403(1).

Sec. 9.

Parole

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to extinguish the sentence but merely to change the conditions of custody. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally divided. State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 20.

Cross-References

Board of examiners continued, sec. 82A-207.

Board of examiners functions transferred to department of administration, sec. 82A-203(2).

Board of prison commissioners continued, sec. 82A-208.

Board of prison commissioners functions transferred, sec. 82A-203(1).

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 21. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties,

except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 17, 1969 (Ch. 1, Ex. Sess., Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970.

Cross-References

Implementation of reorganization amendment, secs. 82A-101 to 82A-2103.

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 2.

Supervisory Control

Writ of supervisory control was proper where district court orders required state highway commission to quiet title against all possible lien holders of land subject to condemnation and to use valuation date more than three years beyond the alleged proper date, where orders were not appealable until after final judgment and this would result in extended and needless litigation if district court was wrong. State Highway Commission v. District Court, — M —, 499 P 2d 1228.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 3.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity of orders on the merits entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110, distinguished in 157 M 310, 486 P 2d 870.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 913.

Factual Issues

Order of contempt that failed to specify facts that constituted contempt before the court was deficient under section 93-9803, since it did not provide opportunity for appellate review. State ex rel. Shea v. District Court, 156 M 266, 479 P 2d 281.

Original Jurisdiction

In view of necessity for 1971 legislature to call a constitutional convention pursuant to the voters' mandate in the 1970 election, and in order to prevent delays that might occur if the legislature passed an unconstitutional act, supreme court would consider and answer questions arising during the legislative session with respect to the constitutional convention in an original proceeding for declaratory judgment authorized by act of the 1971 legislature. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. Gill v. Rafn, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

Stay of Writ

Despite the prohibition in Rule 7 (c), M. R. Civ. App. P., the supreme court has power under this section to stay the execution of a peremptory writ of mandamus issued by the district court when necessary to provide an effective appellate remedy. State ex rel. Bennett v. Dowdall, 157 M 11, 482 P 2d 572.

Supervisory Control—Scope of Power

Writ of supervisory control was necessary and proper to compel district court to dismiss removal petition that could not be granted even if facts alleged were proved. State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark, 155 M 344, 472 P 2d 302.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 11.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity of orders on the merits entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110, distinguished in 157 M 310, 486 P 2d 870.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. Trudgen v. Trudgen, 134 M 174, 329 P 2d 225, 232.

Postconviction Relief

District court has the jurisdiction to consider petition from inmates of state prison for postconviction relief if inmate was sent to prison from judicial district in which petition is filed. Gransberry v. State, 149 M 158, 423 P 2d 853.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an administrative body in carrying out a ministerial function. State ex rel. Lee v. Montana Livestock Sanitary Board, 135 M 202, 339 P 2d 487.

References

Cited or applied in Hustad v. Reed, 133 M 211, 321 P 2d 1083, 1092; Deich v. Deich, 136 M 566, 323 P 2d 35, 38; State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; Petition of Kelly, 146 M 484, 408 P 2d 478; State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 12.

References

Cited or applied in Deich v. Deich, 136 M 566, 323 P 2d 35, 38; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 13.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 14.

References

Cited or applied in Deich v. Deich, 136 M 566, 323 P 2d 35, 38.

Sec. 15.

Notice of Appeal

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment defendant had no voice. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

References

Cited in Gill v. Rafn, 133 M 505, 326 P 2d 974; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

Sec. 16.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 17.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962. This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 21.

Penalty Assessments on Fines

Statute providing penalty assessments in addition to statutory fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which may be imposed for offense charged. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

References

State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 24.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 26.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 28.

References

Cited or applied in First Nat. Bank of White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

Compiler's Note

This constitutes sec. 29 of article VIII as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964. This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

Sec. 35.

Constitutional Convention

Justices and judges may not serve as delegates to state constitutional convention, since a delegate holds public office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE

Sec. 2. Every person of the age of nineteen (19) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote.

Compiler's Notes

This constitutes sec. 2 of Article IX as amended by act approved January 31, 1969 (Ch. 14, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment changed the voting age from 21 to 19 years.

Cross-References

Electors' qualifications in election on school district levy, debt or liability, sec. 75-6410.1.

Debt or Liability

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualifica-

tion to only those debts or liabilities which look to ad valorem taxes for their retirement. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915, distinguished in — M —, 491 P 2d 868, 871.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 916, distinguished in — M —, 491 P 2d 868, 871.

Since the United States supreme court has held invalid the provisions of this section restricting to taxpayers the right to vote on measures creating a debt or liability, there is no longer any reason to limit the requirement for approval by the voters to debts to be retired from ad valorem taxes; therefore, measures authorizing the issuance of bonds secured by the pledge of portions of the constitutional sources of revenue, including income tax, corporation license tax, cigarette tax and gasoline distributors' license tax, at least create liabilities within the meaning of this section and are invalid unless approved by the electors. State ex rel. Ward v. Anderson, — M —, 491 P 2d 868, distinguishing Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907.

Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. Oregon v. Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Residence

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. Oregon v. Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Sec. 5.

Indigent Support

Under constitutional provision defining indigency and statute imposing duty upon county to pay for medical aid rendered indigents, fact that supposed indigent had never supported herself and apparently never would was proof of medical indigency in spite of fact she was employable and notwithstanding absence of evidence of reasons for her inabilities to be productive citizen. Montana Deaconness Hospital v. Lewis and Clark County, 149 M 206, 425 P 2d 316.

Although this section places the burden of providing for the aged, infirm and unfortunate upon the counties, in order for the county to be obligated to pay general relief assistance, there must be specific statutory law so directing. Pease v. Hansen, — M —, 494 P 2d 925.

Unreasonable Standard

Where family of ten had earnings in excess of county welfare board's standard minimum income for determining indigency, application of the standard to deny medical assistance became unreasonable where the family had considerable medical expense and a history of indebtedness. Saint Patrick Hospital v. Powell County, 156 M 153, 477 P 2d 340.

ARTICLE XI—EDUCATION

Sec. 1.

Education Fees

A school district may not assess charges for any course or activity offered during the regular academic year as a part of normal school functions which are reasonably related to a recognized academic and educational goal of the particular school system. Granger v. Cascade County School Dist. No. 1, — M —, 499 P 2d 780.

School district's waiver of constitutionally invalid fees for welfare recipients and other cases of economic hardship did not validate the fees. Granger v. Cascade County School Dist. No. 1, — M —, 499 P 2d 780.

Extracurricular Activities

The thorough system of education required by this section includes extra-

curricular activities sponsored by the schools, and the right to engage in such activities is constitutionally protected. Moran v. School Dist. No. 7, 350 F Supp 1180.

References

Cited in State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

Sec. 2.

Unclaimed Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro-rata share of unpaid dividends would become abandoned property and subject to escheat to state two years after final distribution of assets. Barnes-King Development Co. v. Corette, 156 M 202, 478 P 2d 868.

Sec. 4.

Cross-References

Board as head of department of state lands, sec. 82A-1101.

Board functions retained after reorganization, secs. 82A-1103, 82A-1505(3).

Sec. 7.

Age of Entry

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year, after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

Equal Protection

School district rule prohibiting extra-curricular activities, including varsity football, to married students denied them the equal protection of the laws with respect to the right granted by this section, and enforcement of the rule would be restrained by preliminary injunction. Moran v. School Dist. No. 7, 350 F Supp 1180.

Sec. 8.

Parochial Schools

This section prohibits public school board from either making a levy for or expending funds for employment of teachers to teach secular subjects in parochial schools. State ex rel. Chambers v. School District No. 10 of County of Deer Lodge, 155 M 422, 472 P 2d 1013, distinguished in 156 M 381, 480 P 2d 181.

Services to Indigents

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M 381, 480 P 2d 181.

Sec. 11.

Cross-References

Board as head of department of education, sec. 82A-501.

Delegation of Powers

The legislature in former sections 75-107 and 75-403 R. C. M. 1947, restricted the board of education in delegation of its powers and this precluded college officials from contracting with teachers and instructors on behalf of the board. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

Sec. 12.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Construction with Other Sections

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

License Tax — Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legislature. Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

Statutes Violating This Provision

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts rather than on profits, it was arbitrary and unreasonably discriminatory. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 1a.

Income Tax

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. State ex rel. Anderson v. State Board of Equalization, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely with income taxes. State v. Toomey, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. State v. Toomey, 135 M 35, 335 P 2d 1051.

Sec. 1b.

Gasoline Tax Revenues

Deposit of one per cent of gasoline tax revenues into state park fund as provided by statute did not violate antidiversion amendment of constitution in the absence of proof that legislative finding that not less than one per cent of all gasoline sold in state is consumed by motorboats is erroneous and in absence of proof that all motor fuel taxes resulting from use of vehicles on public highways are not expended on public highways. Harvey v. Blewett, 151 M 427, 443 P 2d 902.

Proper Use of Funds

Use, by state, of state highway trust funds derived essentially from motor vehicle license fees and gasoline taxes to pay assessment levied against property owned or leased by state highway commission and located within flood control and drainage district was proper and such use did not violate this section. State Highway Commission v. West Great Falls Flood Control & Drainage Dist., 155 M 157, 468 P 2d 753.

Sec. 2.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with consti-

tutional provisions relating to religious freedom. State v. King Colony Ranch, 137 M 145, 350 P 2d 841.

Educational Purposes

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

The term "educational purposes," as used in this section and section 84-202, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "used exclusively for educational purposes" within the meaning of this section and section 84-202, it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Home for Aged Persons

Nonprofit foundation operating home for aged was entitled to tax exemption under statute granting a tax exemption to institutions of purely public charity, notwithstanding evidence that the foundation charged fees, imposed admission requirements and maintained a high standard of care, and notwithstanding argument that 1965 amendment to statute, specifically including homes for aged, was unlawful attempt by legislature to expand exemption allowed by constitution. Bozeman Deaconness Foundation v. Ford, 151 M 143, 439 P 2d 915, 37 ALR 3d 558.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under this section and section 84-202, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

Trust Property

Provision under section 11-4108 for taxing property in which county or municipality has only a trust interest as opposed to a beneficial interest does not violate this section, since taxation of property is based on its use. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

Sec. 3.

Adverse Possession

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. Johnson v. Unknown Heirs, 140 M 128, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. State ex rel. Roberts v. State Board of Equalization, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. United States Gypsum Co. v. Schreiner, 135 M 312, 340 P 2d 548.

Rights of Entry

This section favors the exploration and development of minerals, and a right of entry to explore for and extract minerals created by conveyance from the owner of the fee is not taxable as a separate entity. Cranston v. Musselshell County, 156 M 288, 483 P 2d 289, distinguishing Northern Pacific Ry. Co. v. Musselshell County, 54 M 96, 169 P 53.

Sec. 7.

"Owned or Used"

Property in which county has trust interest, but corporation has the use, will be taxed to corporation and not be exempted as county property under Montana constitution, article XII, section 2. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

Sec. 11.

Classification of Property

Assessment of plaintiff's property based on "market value" rather than upon use of property for agricultural purposes did not violate this section since evidence showed that such property was located within commercial area and its market value far exceeded its value for agricultural purposes. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Construction with Other Sections

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

Discriminatory Enforcement

State board of equalization could enforce statute providing for assessment of property brought into state subsequent to regular assessment date as against trucks and used cars without also enforcing it against every other type of retail inventory and without violating uniformity requirement of constitution. Hardin Auto Co. v. Alley, 149 M 1, 422 P 2d 346.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 12.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 920.

Sec. 13.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 14.

Cross-References

Depository board continued, sec. 82A-209.

Sec. 15.

Construction with Other Sections

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

Increased Valuation

State board of equalization's directive to county officials requiring use of certain valuations on grades of farm land for subsequent years, was enforceable by mandamus since the board had not only powers of adjustment, equalization and supervision over assessors under this section and section 84-708, but also the power to issue directives for those purposes. State ex rel. State Board of Equalization v. Koch, 145 M 474, 401 P 2d 765.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. State Board of Equalization v. Kovich, 142 M 201, 383 P 2d 818.

That an order of the state board of equalization prescribing a uniform method of appraising timberlands may not have been supported by the evidence adduced at a hearing does not give the counties ground for ignoring the order until such time as the order has been adjudicated invalid by a court of competent jurisdiction. State ex rel. Conrad v. Managhan, 157 M 335, 485 P 2d 948.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 67.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P 2d 634, 635.

References

Cited in Blair v. Potter, 132 M 176, 315 P 2d 177, 182.

Sec. 16.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 33.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Industrial Development Revenue Bonds

Provision for issuance of revenue bonds pursuant to Industrial Development Project Act (11-4101—11-4110) does not violate this section, since the credit in aid provided for in that act is for public purpose, despite the fact that certain individuals, associations or corporations may benefit from the legislation. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

Laws Violating This Provision

An appropriation to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 34.

Services to Indigents

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies does not violate this section. Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M 381, 480 P 2d 181.

References

Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 487.

Sec. 2.

"Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 916, distinguished in — M —, 491 P 2d 868, 871.

Since the United States supreme court has held invalid limiting to taxpayers the right to vote on questions of debt or liability, there is no longer any reason to limit the words "debt or liability" as used in this section to debts to be retired out of ad valorem taxes. State ex rel. Ward v. Anderson, — M —, 491 P 2d 868, distinguishing Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907.

Issuance of bonds to be repaid from proceeds of income tax, corporation license tax, tobacco tax and gasoline tax would create a liability, if not a debt, within the meaning of this section, and the bonds must be approved by a vote of the people before they may be issued. State ex rel. Ward v. Anderson, — M —, 491 P 2d 868, distinguishing Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in Morgan v. Murray, 134 M 92, 328 P 2d 644, 649.

Sec. 5.

Industrial Development Revenue Bonds

Industrial Development Project Act (11-4101—11-4110) does not violate this section, since it provides for revenue bonds and does not create debt or liability within the meaning of this section. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

References

State ex rel. Keast v. Krieg, 147 M 164, 410 P 2d 710.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

Combined Bond Issue

Bonds issued pursuant to a plan authorizing high school district and common school district included therein to build grade school and high school in one compact unit sharing common facilities was not an attempt to circumvent debt limits imposed on the districts by the constitution. Long v. School District No. 44, 149 M 220, 425 P 2d 822.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within the meaning of this section. State ex rel. Simmons v. City of Missoula, 144 M 210, 395 P 2d 249, 251.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. Sensabaugh v. Polson Plywood Co., 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. Sensabaugh v. Polson Plywood Co., 135 M 562, 342 P 2d 1064.

Sec. 9.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. Billings Properties, Inc. v. Yellowstone County, 144 M 25, 394 P 2d 182.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 31.

Sec. 13.

Lease of State Lands

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 336.

References

State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 112.

Sec. 20.

Fair Trade Act

The Fair Trade Act (now repealed) permitted price-fixing in violation of this section and was therefore invalid. Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc., 139 M 15, 359 P 2d 644, distinguished in 141 M 149, 159, 376 P 2d 508.

Operation and Effect

The activity proscribed by this section has no relation to police power. Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 514.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc., 139 M 15, 359 P 2d 644.

References

Cited in Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 279; McNussen v. Graybeal, 146 M 173, 405 P 2d 447.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 5.

References

Husky Hi Power, Inc. v. Schmidt, 140 M 353, 372 P 2d 142, 144.

Sec. 7.

City-County Government

A city-county planning board established without reference to the electors was in violation of this section. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

Market Value

The test of "willing buyer-willing seller" has little applicability in awarding a lease to farm land by the state. A more appropriate test is the value of similar leases in the particular community, coupled with the applicant's ability as a farmer and other variables to be considered by the state in securing as large a return as possible on the land, while preserving its productive capacity. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 2.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 3.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

ARTICLE XVIII—LABOR

Sec. 1.

Cross-References

Commissioner continued as head of department, sec. 82A-1001.

Commissioner of agriculture continued as head of department, sec. 82A-301.

Commissioner of agriculture functions transferred to department, sec. 82A-303 (3).

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63 which would legalize lotteries and repeal sections 94-3001 to 94-3011 is unconstitutional. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. State v. Cox, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

Sec. 4.

Waiver of Exemption

This section establishes public policy in favor of liberal exemption laws, and the enforcement of a clause in an executory contract waiving statutory exemptions is against public policy, even without a statute expressly invalidating such waivers. Anaconda Federal Credit Union, # 4401 v. West, 157 M 175, 483 P 2d 909.

Sec. 8.

Delegates to Convention

Legislators and other officers of the state are ineligible to serve as delegates to a constitutional convention during their term of office. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330, distinguished in — M —, 496 P 2d 1125.

Delegates to the constitutional convention must be elected in the same manner as legislators, including the provisions for partisan elections. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Delegates to the constitutional convention must be elected from districts apportioned according to the 1970 census and to be used for the election of legislators in 1972. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 9, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Majority of Electors

"Approval by a majority of the electors voting at the election" means approval by a majority of a total number of electors casting valid ballots on the question of approval or rejection of a new constitution, and does not refer to or include those electors who fail to express an opinion by a vote on that issue. State ex rel. Cashmore v. Anderson, — M —, 500 P 2d 921.

Voter Education

This section does not grant to a constitutional convention the power to expend public funds for voter education with respect to the convention's proposals. State ex rel. Kvaalen v. Graybill, — M —, 496 P 2d 1127.

Sec. 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be

entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately. Not more than three amendments to this constitution shall be submitted at the same election, except that there may be submitted at each of the general elections held in the years 1972, 1974 and 1976, in addition to the three amendments otherwise authorized by this section, an amendment or amendments providing for the reorganization of the executive department of government which may include the revision or repeal of sections of this constitution relating to any boards, offices, and departments other than legislative and judicial offices. The reorganization of the executive department is a single subject, and an additional amendment relating to that subject authorized by this section may be submitted to the qualified electors of the state in the form of a title clearly expressing its subject.

Compiler's Notes

This constitutes sec. 9 of article XIX as amended by act approved February 21, 1969 (Ch. 66, Laws 1969), adopted at the general election of November 3, 1970, and effective under the governor's proclamation of November 20, 1970. The amendment added to the next to last sentence the exceptions applicable to the elections of 1972, 1974 and 1976, and it added the last sentence to the section.

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, being unconstitutional, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 8.

Bonds Fully Guaranteed

The phrase "bonds fully guaranteed by the United States" in this section means "instruments in writing constituting a promise to pay a sum certain, with interest at a definite rate, to a holder or bearer by a defined future date, which are fully guaranteed at 100% of their face value as substantiated by a written opinion of the federal government," and includes all securities meeting that definition even though they may be called debentures, certificates, notes, bills or by other terms. In re Montana Trust & Legacy Fund, — M —, 489 P 2d 612.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ORDINANCE NO. I—FEDERAL RELATIONS

Operation and Effect

Neither a constitutional amendment nor a referendum was required, but a legislative act was sufficient on behalf of the people to assume jurisdiction of crimes by or against Indians committed in Indian country, pursuant to federal statute reserving to Congress power to resume federal jurisdiction by repeal of the statute. State ex rel. McDonald v. District Court, — M — , 496 P 2d 78.

THE

CONSTITUTION

OF THE

STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION
MARCH 22, 1972 AND RATIFIED BY THE PEOPLE, JUNE 6, 1972

Preamble

Article

I. Compact with the United States
II. Declaration of Rights
III. General Government
IV. Suffrage and Elections
V. The Legislature
VI. The Executive
VII. The Judiciary
VIII. Revenue and Finance
IX. Environment and Natural Resources
X. Education and Public Lands
XI. Local Government
XII. Departments and Institutions
XIII. General Provisions
XIV. Constitutional Revision

Transition Schedule

HISTORICAL NOTE

Chapter 65, Laws of 1969, submitted to the electors a question as to whether a constitutional convention should be called in accordance with section 8, Article XIX of the 1889 Constitution "to revise, alter, or amend" the Constitution. At the general election of November 3, 1970, the electors approved the calling of a constitutional convention by a vote of 133,482 for the convention and 71,643 against.

Pursuant to the mandate of section 8, Article XIX of the 1889 Constitution, the Forty-second Legislative Assembly, by Chapter 296, Laws of 1971, provided for the selection of delegates and for the convening of a constitutional convention. Chapter 296 was amended in some respects by Chapter 1, 1st Extraordinary Session, Laws of 1971.

Delegates to the constitutional convention were nominated on September 14, 1971 and elected on November 2, 1971. Delegates were elected in the same manner and from the same districts as members of the house of representatives, based on section 43-106.7.

After an organizational session on November 29, 1971, the constitutional convention convened in plenary session on January 17, 1972. On March 22, 1972, the convention adopted an entirely new constitution, then adjourned sine die on March 24, 1972.

The proposed constitution was submitted to the electors in a special election of June 6, 1972. The result, as certified by the secretary of state, was 116,415 votes for the new constitution and 113,883 against.

Three alternate propositions were separately submitted to the electors on June 6, 1972. The first would have restated Article V of the new constitution so as to create a unicameral rather than a bicameral legislature. This proposition was defeated with a vote of 95,259 for a unicameral legislature and 122,425 for a bicameral legislature.

A second proposition separately submitted reworded section 9, Article III of the new constitution so as to permit the people or the legislature to authorize gambling. This proposition carried with a vote of 139,382 for and 88,743 against gambling.

The third proposition separately submitted would have added to section 28, Article II of the new constitution a sentence abolishing capital punishment. This proposition was defeated with a vote of 147,023 for the death penalty and 77,733 against.

After the election of June 6, 1972, a question arose as to whether the new constitution had been approved by "a majority of the electors voting at the election," as required by section 8, Article XIX of the 1889 Constitution. An original proceeding for declaratory judgment was brought in the Montana supreme court to determine this question. On August 18, 1972, the supreme court held in a three-to-two decision that the new constitution had been approved by the required majority of the electors and would become effective according to its terms. State ex rel. Cashmore v. Anderson, — M —, 500 P 2d 921. Rehearing was denied on September 25, 1972.

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

Convention Notes

Preamble is new. The old Preamble is deleted.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following the Preamble of the 1889 Constitution in bound Volume One, Part 1.

ARTICLE I
COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

Convention Notes

Makes it clear that the new constitution does not affect any agreements made with the United States Government when Montana first became a state.

Decisions under Former Provisions

For decisions relating to Ordinance No. 1 appended to the 1889 Constitution, see pages 328 to 330 in bound Volume One, Part 1.

ARTICLE II
DECLARATION OF RIGHTS

Section
1. Popular sovereignty.
2. Self-government.

3. Inalienable rights.
4. Individual dignity.
5. Freedom of religion.
6. Freedom of assembly.
7. Freedom of speech, expression, and press.
8. Right of participation.
9. Right to know.
10. Right of privacy.
11. Searches and seizures.
12. Right to bear arms.
13. Right of suffrage.
14. Adult rights.
15. Rights of persons not adults.
16. The administration of justice.
17. Due process of law.
18. State subject to suit.
19. Habeas corpus.
20. Initiation of proceedings.
21. Bail.
22. Excessive sanctions.
23. Detention.
24. Rights of the accused.
25. Self-incrimination and double jeopardy.
26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Convention Notes

Identical to 1889 Constitution [Art. III, sec. 1]. Expresses the philosophy that government is founded on the will of the people and is for their good.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Convention Notes

No change except in grammar [Art. III, sec. 2]. Gives Montanans the right to govern themselves and to determine their form of government.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protect-

ing property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 3] by adding three rights, relating to environment, basic necessities, and health. The last sentence is also new and provides that in accepting rights people have obligations.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision prohibiting public and private discrimination in civil and political rights.

Cross-References

Freedom from discrimination as civil right, sec. 64-301 et seq.

Nondiscrimination in education, 1972 Const. Art. X, sec. 7.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Convention Notes

Revises 1889 constitution [Art. III, sec. 4] by using wording of the U.S. constitution to guarantee free exercise of religion and prohibit the state from establishing a religion.

Cross-References

Schools not to instruct in sectarian doctrine, sec. 75-7521.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Convention Notes

No change except in grammar [Art. III, sec. 26]. Retains basic rights to assemble and to petition or protest for redress of grievances.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 26, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall

be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 10] by enlarging a citizen's freedom to express himself and allowing the truth to be given in evidence in slander as well as libel cases.

Cross-References

Criminal libel, sec. 94-2801 et seq.; new Criminal Code, sec. 94-8-111.

Defamation, libel and slander defined, sec. 64-202 et seq.

Political criminal libel, sec. 94-1454 redesignated 23-4754.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Convention Notes

New provision creating a right of the people to participate in the decision making process of state and local government.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision that government documents and operations be open to public scrutiny except when the right to know is outweighed by the right to individual privacy.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision prohibiting any invasion of privacy unless the good of the state makes it necessary.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue

without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 7].

Cross-References

Motion to suppress evidence illegally seized, sec. 95-1806.

Search and seizure, procedural requirements, sec. 95-701 et seq.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 7, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 13].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 13, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 13. Right of suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 5].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 5, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision. Self explanatory.

Cross-References

Minors and adults defined, sec. 64-101.

Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision giving children all of the rights that adults have unless a law meant to protect children prohibits their enjoyment of the right.

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Adds to 1889 constitution [Art. III, sec. 6] by specifically granting to a person injured in employment the right to sue a third party causing the injury, except his employer or fellow employee when his employer provides coverage under workmen's compensation laws.

Cross-References

Injured workman's action against third party, sec. 92-204.1.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 6, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 17. Due process of law. No person shall be deprived of life, liberty, or property without due process of law.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 27].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 27, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision abolishing the doctrine of sovereign immunity ("the King can do no wrong") and allowing any person to sue the state and local governments for injuries caused by officials and employees thereof.

Cross-References

Tort claims and state insurance plan, secs. 82-4301 to 82-4327.

Section 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 21] which allowed the writ of habeas corpus to be suspended in case of rebellion or invasion. Revision provides that the writ (the right to test the lawfulness of a person's being detained) may never be suspended.

Cross-References

Habeas corpus, scope and procedure, sec. 95-2701 et seq.

Supreme court jurisdiction, 1972 Const. Art. VII, sec. 2.

Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Convention Notes

Retains method in 1889 constitution [Art. III, sec. 8] of starting criminal actions. Increases grand jury from seven to eleven persons.

Cross-References

Grand jury, composition and drawing, sec. 93-1801 et seq.

Grand jury, summoning, powers and duties, sec. 95-1401 et seq.

Methods of prosecution, procedure, sec. 95-1501 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 21. Bail. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Compiler's Notes

A separately submitted proposition against the death penalty which would have deleted from this section: "except for capital offenses, when the proof is evident or the presumption great" was not adopted by the electorate.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 19]. Guarantees that all persons are bailable except in case of certain offenses punishable by death.

Cross-References

Bail, purpose, procedure, sec. 95-1101 et seq.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 19, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 20].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 20, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the

same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Convention Notes

Deleted provision in 1889 constitution [Art. III, sec. 17] that depositions may be used in a trial if the witness who gave it is dead or out of state. Retained language is identical to 1889 constitution.

Cross-References

Depositions in criminal cases, sec. 95-1802.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 17, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 16]. Establishes fundamental procedural rights of a person accused of crime.

Cross-References

Change of place of trial when fair trial cannot be had in county, sec. 95-1710.

Confessions obtained by duress or inhuman practices, misdemeanor, secs. 94-3918, 94-3919; new Criminal Code, sec. 94-8-113.

Examination of witnesses on commission, sec. 95-1802.

Form of charge, sec. 95-1503.

Method of trial, sec. 95-1901 et seq.

Right to counsel, sec. 95-1001 et seq.

Subpoenas, sec. 95-1801.

Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases, secs. 95-1809 to 95-1811.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 16, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 18] by protecting a person from being tried for the same crime by both this state and the United States or another state.

Cross-References

Defense of former prosecution, when allowed, exceptions, sec. 95-1711.

Protection of witnesses against self-incrimination, sec. 93-2101-2.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 18, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent

of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 23] by permitting a defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases and by requiring all jurors (rather than 2/3) agree before a defendant may be convicted of a misdemeanor.

Cross-References

Civil cases, jury trial of right, M. R. Civ. P., Rule 38.

Criminal cases, method of trial in district court, sec. 95-1901 et seq.

Criminal cases, method of trial in justice and police courts, sec. 95-2004 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 23, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 12]. Safeguards the right of a person in debt to be free from imprisonment.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 12, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 28. Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

A separately submitted proposition which would have added the following sentence to this section: "Death shall not be prescribed as a penalty for any crime against the state" was not adopted by the electorate.

Convention Notes

Revises 1889 constitution [Art. III, sec. 24] by deleting reference to capital punishment and providing that rights a person loses when convicted of a crime are automatically restored when he has served his sentence.

Cross-References

Civil rights to convict suspended, 95-2227.

Execution of sentence, sec. 95-2301 et seq.

Inhumanity to prisoners, penalty, sec. 94-3917; new Criminal Code, sec. 94-8-113.

Sentence and judgment, sec. 95-2201 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotation under sec. 24, Art. III of the 1889 Constitution in this supplement.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Retains provisions in 1889 constitution [Art. III, sec. 14] on eminent domain and expands its protection by guaranteeing that a property owner who goes to court and is awarded more money than offered for his property being condemned will be reimbursed for the necessary expenses of the lawsuit (such as appraiser and attorneys fees).

Cross-References

Eminent domain, procedure, sec. 93-9901 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 14, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Convention Notes

No change except in grammar [Art. III, sec. 9].

Cross-References

Evidence on trial for treason, secs. 93-1401-2, 95-3002.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations under sec. 9, Art. III of the 1889 Constitution in this supplement.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 11].

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 11, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 22].

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 31].

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Convention Notes

Identical to 1889 constitution [Art. III, sec. 30].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 30, Art. III of the 1889 Constitution in bound Volume One, Part 1.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision allowing legislature to give servicemen, servicewomen, and veterans special treatment in the law.

ARTICLE III

GENERAL GOVERNMENT

Section
1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Convention Notes

Identical to 1889 constitution [Art. IV, sec. 1] except for substitution of the word "branches" for "departments." This distinguishes the three branches of government from the 20 departments in the executive branch.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. IV of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Convention Notes

Revises 1889 constitution [Art. X, sec. 3] by removing provision which allowed seat of government to be moved by a vote of 2/3 of the people. No other change except in grammar. [See also 1889 constitution Art. V, sec. 46.]

Cross-References

Continuity in government, post-enemy-attack, sec. 82-3801 et seq.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Convention Notes

Shortened version of oath contained in 1889 constitution [Art. XIX, sec. 1].

Cross-References

Acting in public capacity without having qualified, misdemeanor, sec. 94-3901.

Form of oath, filing, sec. 59-413 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. XIX of the 1889 Constitution in bound Volume One, Part 1.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Convention Notes

Revises 1889 constitution [Art. V, sec. 1] by requiring a petition to be signed by 5% of electors in 1/3 of the legislative districts instead of 8% in 2/5 of the counties.

Cross-References

Form of petition, procedure, sec. 37-102 et seq.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Convention Notes

Revises 1889 constitution [Art. V, sec. 1] by allowing people to vote on any act of the legislature except appropriations and by requiring referendum petitions to be signed by 5% of the electors in 1/3 of the legislative districts instead of 8% of the electors in 2/5 of the counties. (1889 Constitution does not allow referendums on laws "necessary for the immediate preservation of the public peace, health, or safety.")

Cross-References

Form of petition, procedure, secs. 37-101, 37-103 et seq.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Convention Notes

No change except in grammar [Art. V, sec. 1].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Convention Notes

No change except in grammar [Art. V, sec. 1].

Section 8. Prohibition. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Convention Notes

New provision which differentiates the general initiative and referendum requirements from the special initiative and referendum requirements for amending the constitution.

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Compiler's Notes

This section became a part of the constitution as the result of the approval by the electorate of a separately submitted provision. The adoption added: "unless authorized by acts of the legislature or by the people through initiative or referendum."

Convention Notes

Adds the word "gambling" to language of 1889 constitution [Art. XIX, sec. 2]. Makes it clear that all forms of gambling are prohibited. [See Compiler's Notes, above.]

Cross-References

Gambling prohibited, secs. 94-2401 to 94-2432; new Criminal Code, secs. 94-8-401 to 94-8-431.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE IV

SUFFRAGE AND ELECTIONS

Section
1. Ballot.
2. Qualified elector.
3. Elections.
4. Eligibility for public office.
5. Result of elections.
6. Privilege from arrest.

Section 1. Ballot. All elections by the people shall be by secret ballot.

Convention Notes

Revises 1889 constitution [Art. IX, sec. 1] by adding the word "secret."

Cross-References

Elections to be by ballot, sec. 23-2602.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Convention Notes

Revises 1889 constitution [Art. IX, secs. 2, 3, 6, 8, 12]. Provides legislative rather than constitutional requirements for residence and registration. Convicted felon loses voting rights only while incarcerated. (18 is voting age established for ALL elections by 26th amendment to U.S. constitution ratified June 30, 1971).

Cross-References

Attempting to vote without being qualified, misdemeanor, sec. 94-1404 redesignated 23-4704.

Qualifications of voters, sec. 23-2701.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. IX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Convention Notes

Revises 1889 constitution [Art. IX, secs. 2, 9]. Provides legislative rather than constitutional establishment of requirements which are often affected by (and sometimes in conflict with) federal law and court decisions. When necessary to comply with federal requirements it is much easier to change the law than to amend the constitution. Second sentence specifically authorizes legislature to provide for voter registration at time and place of voting—rather than in advance of election.

Cross-References

Absentee voting and registration, secs. 23-3006, 23-3701 et seq.

Election frauds and offenses, sec. 94-1401 et seq. redesignated 23-4701 et seq.

Elections, definitions and general provisions, sec. 23-2601 et seq.

Registration of electors, sec. 23-3001 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2 and 9, Art. IX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Convention Notes

Revises 1889 constitution [Art. IX, secs. 7, 10, 11] by providing that a felon's right to seek public office is automatically restored after serving sentence.

Cross-References

Disqualifications and restrictions, sec. 59-301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 10 and 11, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

Section 5. Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Convention Notes

No change except in grammar [Art. IX, sec. 13].

Cross-References

Determination of candidate elected, sec. 23-2603.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 13, Art. IX of the 1889 Constitution in bound Volume One, Part 1.

Section 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

Convention Notes

1889 constitution [Art. IX, sec. 4] reworded. Voter is immune from arrest during the voting process unless during such time he commits a felony or breach of peace.

Cross-References

Privilege from arrest, secs. 23-2705, 95-616.

ARTICLE V

THE LEGISLATURE

Section
1. Power and structure.
2. Size.
3. Election and terms.
4. Qualifications.
5. Compensation.
6. Sessions.
7. Vacancies.
8. Immunity.
9. Disqualification.
10. Organization and procedure.
11. Bills.
12. Local and special legislation.
13. Impeachment.
14. Districting and apportionment.

Section 1. Power and structure. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

A separately submitted proposition concerning a unicameral legislature, was not adopted by the electorate.

Convention Notes

No change except in grammar [Art. V, sec. 1].

Cross-References

Composition of legislative assembly, sec. 43-201.

Initiative, 1972 Const. Art. III, sec. 4.

Referendum, 1972 Const. Art. III, sec. 5.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Size. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Convention Notes

New provision for determining size of legislature.

Decisions under Former Provisions

For decision on related provisions in the 1889 Constitution, see annotation under sec. 4, Art. V of the 1889 Constitution in this supplement.

Section 3. Election and terms. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Compiler's Notes

Section 2 of the Transition Schedule provides that this section shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 5 of the Transition Schedule provides:

"(1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

"(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number."

Convention Notes

Revises 1889 constitution [Art. V, sec. 2] by adding requirement for staggered terms for senators.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 4. Qualifications. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Convention Notes

Revises 1889 constitution [Art. V, sec. 3] by reducing district or county residency requirements from one year to six months and eliminating age requirements.

Section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Convention Notes

No change except in grammar [Art. V, secs. 5, 8].

Cross-References

Per diem, mileage and expenses of members, sec. 43-310.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 5 and 8, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 6. Sessions. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Compiler's Notes

Section 1 of the Transition Schedule provides that this section shall be effective January 1, 1973.

Convention Notes

New provision. "Continuous body" does not mean the legislature is in continuous session but means the legislature has legal existence even when not actually meeting. It will have regular annual sessions of 60 days. A legislature cannot pass a law that IT can meet for more than 60 legislative days but can provide that future legislatures may meet longer. Legislature as well as the governor may call a special session. [See 1889 constitution Art. V, secs. 5, 6.]

Cross-References

Special sessions, procedure for calling, secs. 43-319 to 43-325.

Section 7. Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Convention Notes

New provision which would require filling vacancies by election if the present law requiring appointments is ever repealed.

Cross-References

Vacancies, how filled, sec. 59-604 et seq.

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Convention Notes

No change except in grammar [Art. V, sec. 15].

Cross-References

Privilege from arrest, sec. 95-616.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 9. Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Convention Notes

No change except in grammar [Art. V, sec. 7].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. Organization and procedure. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Convention Notes

(1) and (2) no change except in grammar [Art. V, secs. 9, 10, 11, 12]. (3) Revises 1889 Constitution [Art. V, sec. 13] by preventing the legislature from conducting secret proceedings. (4) New provision specifically allowing the legislature to create committees to work between the annual meetings. (5) No change except in grammar [Art. V, sec. 14].

Cross-References

Disruption of legislative proceedings, secs. 94-2901, 94-2902; new Criminal Code, secs. 94-7-302, 94-8-101.

Legislative council, sec. 43-709 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 9, 11 and 12, Art. V of the 1889 Constitution in bound Volume One, Part 1.

Section 11. Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Convention Notes

(1) No change except in grammar [Art. V, sec. 19]. (2) Changes 1889 constitution [Art. V, sec. 24] by requiring recorded votes on all actions which affect passage of a bill. (3) (4) (5) No change except in grammar [Art. V, secs. 23, 33, 35]. (6) New provision. After it is two years old a law cannot be challenged in court because of technical errors in the way it was passed.

Cross-References

Altering draft or engrossed or enrolled copy of bill or resolution, secs. 94-2903, 94-2904; new Criminal Code, sec. 94-7-209.

Bribery of members of legislative assembly, penalties, sec. 94-2905 et seq.; new Criminal Code, sec. 94-7-102.

Journals, how authenticated, sec. 43-304.

Personal interest of member in bill, misdemeanor, sec. 94-2911; new Criminal Code, sec. 94-7-401.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 19, 23, 24, 33 and 35, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 12. Local and special legislation. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Convention Notes

No change except in grammar [Art. V, sec. 26].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 26, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 13. Impeachment. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Convention Notes

Minor revision [Art. V, secs. 16, 17, 18]. Two-thirds rather than a majority vote necessary to impeach. The legislature may choose the senate or another body to hear the charges.

Cross-References

Conviction of crime, forfeiture of office, sec. 94-2914; new Criminal Code, sec. 94-7-401.

Impeachment, procedure, sec. 95-2801 et seq.

Removal of officers otherwise than by impeachment, sec. 94-5501 et seq.; new Criminal Code, sec. 94-7-401.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 16 to 18, Art. V of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commissison shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Compiler's Notes

Section 1 of the Transition Schedule provides that this section shall be effective January 1, 1973.

Convention Notes

(1) New provision for single-member house districts. Two house districts constitute a senatorial district. (2) and (3)

new provision which establishes a five member commission to recommend a reapportionment plan after each U.S. census. [See 1889 constitution Art. VI, secs. 2, 3.]

Cross-References

Senatorial, representative and congressional districts, sec. 43-106.6 et seq.

Decisions under Former Provisions

For decisions relating to provisions in the 1889 Constitution, see annotations under Article VI of the 1889 Constitution in this supplement.

ARTICLE VI

THE EXECUTIVE

Section
1. Officers.
2. Election.
3. Qualifications.
4. Duties.
5. Compensation.
6. Vacancy in office.
7. Twenty departments.
8. Appointing power.
9. Budget and messages.
10. Veto power.
11. Special session.
12. Pardons.
13. Militia.
14. Succession.
15. Information for governor.

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Convention Notes

Revises 1889 constitution [Art. VII, secs. 1, 8, 20]. Removes constitutional status of state treasurer, board of examiners, and state examiner. The offices still appear in the law. All officers mentioned must reside at capital. 1889 constitution exempts lieutenant governor from this requirement.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and

lieutenant governor are voted upon together in primary and general elections.

Convention Notes

Only change [Art. VII, sec. 2] is subsection (2) which is new requirement that governor and lieutenant governor must run as a team.

Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 3]. Sets 25 as age requirement for governor, lieutenant governor, superintendent of public instruction and attorney general. Age requirement for secretary of state unchanged. New requirements that candidate for attorney general be admitted to practice law for five years and superintendent of public instruction have educational qualifications set by law.

Cross-References

Superintendent of public instruction, qualifications, sec. 75-5702.

Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Convention Notes

Only change [Art. VII, secs. 1, 5, 15, 17] is subsection (2) which is new provision allowing legislature to make lieutenant governor full time. Deletes provision that lieutenant governor be president of senate.

Cross-References

Attorney general, duties, sec. 82-401.

Governor, powers and duties, sec. 82-1301.

Lieutenant governor, duties, sec. 82-1702.3.

Secretary of state, custody of records, duties, sec. 82-2201 et seq.

State auditor, general fiscal duties, sec. 79-101.

Superintendent of public instruction, election, duties, sec. 75-5701 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 5 and 15, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Compensation. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 4]. Salaries may be increased or decreased. Public official may not receive more than one salary or hold more than one office but may be **candidate** for another office without resigning.

Cross-References

Salaries of elected state officials, sec. 25-501.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Convention Notes

Revises 1889 constitution [Art. VII, secs. 7, 15, 16] by changing method of filling vacancy in office of lieutenant governor. Senate confirmation no longer required for appointments to fill vacancies in offices listed.

Cross-References

Resignation and vacancies, sec. 59-601 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 7 and 15, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 7. Twenty departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant gov-

ernor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Convention Notes

Only grammar change in 20 department reorganization amendment [Art. VII, sec. 21] adopted by the people in November, 1970.

Cross-References

Reorganization of executive branch, Title 82A.

Section 8. Appointing power. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Convention Notes

Subsection (1) new provision. Unless law provides otherwise governor appoints heads of the 20 departments, subject to senate confirmation. No change except in grammar in subsections (2) and (3) [Art. VII, sec. 7]. Subsection (4) is new provision prohibiting nomination or appointment of persons previously rejected by senate.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 9. Budget and messages. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Convention Notes

Makes it mandatory that Governor send budget to legislature. Otherwise no change except in grammar [Art. VII, sec. 10].

Cross-References

Budget, submission to legislature, form, contents, sec. 79-1015.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Convention Notes

Subsection (1) revises 1889 constitution [Art. VII, sec. 12]. Amendments to U.S. and Montana constitutions and legislative resolutions may be passed without governor's signature. [See 1889 constitution Art. V, sec. 40 and Art. XIX, sec. 9.] Pocket veto after adjournment eliminated. Subsection (2) new provision. "Amendatory veto" enables governor to return bills with suggestions for changes. No change in subsection (3) except for grammar [Art. VII, sec. 12]. Provision in subsection (4) for reconvening to consider vetoed bills is new. [Subsection (5), see 1889 constitution Art. VII, sec. 13.]

Cross-References

Bills, governor's approval or veto, sec. 43-501 et seq.

Reconvening to reconsider vetoed bills, secs. 43-320 to 43-325, 43-504 (3).

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 40, Art. V; and following secs. 12 and 13, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 11. Special session. Whenever the governor considers it in the public interest, he may convene the legislature.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 11]. Continues power of governor to call special sessions of the legislature but removes his power to limit subjects to be considered.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 12. Pardons. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Convention Notes

Revises 1889 constitution [Art. VII, sec. 9]. Deletes reference to board of pardons (which is provided for by law) and to the board of prison commissioners (which is defunct).

Cross-References

Probation, parole and executive clemency act, sec. 95-3203 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. VII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 13. Militia. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Convention Notes

Last phrase of subsection (1) [Art. VII, sec. 6] regarding protection of life and property is new. Subsection (2) [Art. XIV, sec. 1] removes sex and age qualifications for militia.

Cross-References

Militia, governor as commander-in-chief, sec. 77-103.

Militia, governor's power to order out militia, secs. 77-107 et seq., 94-5303 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 6, Art. VII, and following sec. 1, Art. XIV of the 1889 Constitution in bound Volume One, Part 1.

Section 14. Succession. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature

so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Convention Notes

New provision based on 25th amendment to U.S. Constitution. If governor dies, is disqualified, or resigns, the lieutenant governor takes his place. If governor is gone from the state more than 45 days or is temporarily disabled the lieutenant governor becomes acting governor. If the lieutenant governor and the attorney general think the governor is unable to perform his duties they may send notice to the legislature. By a two-thirds vote the legislature can decide that the lieutenant governor shall serve as acting governor because the governor is unable to act. [See 1889 constitution Art. VII, secs. 14, 15, 16.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 14, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

Section 15. Information for governor. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

Convention Notes

No change except in grammar [Art. VII, sec. 10].

Cross-References

Annual reports to governor, secs. 82-4001, 82-4002.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 10, Art. VII of the 1889 Constitution in bound Volume One, Part 1.

ARTICLE VII

THE JUDICIARY

Section
1. Judicial power.
2. Supreme court jurisdiction.
3. Supreme court organization.
4. District court jurisdiction.
5. Justices of the peace.
6. Judicial districts.
7. Terms and pay.
8. Selection.

9. Qualifications.
10. Forfeiture of judicial position.
11. Removal and discipline.

Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Convention Notes

Revises 1889 constitution [Art. VIII, sec. 1] by allowing the legislature to establish "inferior" courts, such as a small claims court, as well as intermediate courts of appeal. Reference in 1889 constitution to senate as court of impeachment is deleted.

Cross-References

Courts of state, sec. 93-101.

Municipal courts, sec. 11-1701 et seq.
Police courts, sec. 11-1601 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Convention Notes

(1) No change except in grammar [Art. VIII, secs. 2, 3]. (2) No change except in grammar [Art. VIII, sec. 2]. (3) Allows Supreme Court to make rules governing itself, other courts and lawyers. Legislature may veto the rules. (4) No change except in grammar [Art. VIII, sec. 2].

Cross-References

Jurisdiction of supreme court, sec. 93-213 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2 and 3, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Convention Notes

Only change, except in grammar, allows legislature to increase number of justices to six should the need arise [Art. VIII, sec. 5].

Cross-References

Concurrence of majority, sec. 93-217.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Convention Notes

(1) No change except in grammar [Art. VIII, sec. 11]. (2) New provision providing for appeal from lower courts and state agencies. (3) New provision which allows legislature to create other courts having the same power as district courts.

Cross-References

Jurisdiction of district court, sec. 93-317 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Convention Notes

(1) Revises 1889 constitution [Art. VIII, sec. 20] by requiring one justice of the peace in each county instead of two in each township and allows legislature to set qualifications, training standards and salaries. Provision for "dignified surroundings" is new. (2) Deletes references in 1889 constitution [Art. VIII, sec. 21] to types of cases which may not be handled by a justice of the peace and provides that legislature may determine this except that they may not try felony cases. (3) No change except in grammar [Art. VIII, sec. 20].

Cross-References

Jurisdiction of justice courts, sec. 93-408 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 20 and 21, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Judicial districts. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Convention Notes

(1) (2) No change except in grammar [Art. VIII, secs. 12, 14]. (3) New provision allowing the chief justice temporarily to assign judges to districts other than their own.

Cross-References

Judicial districts, sec. 93-301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 12 and 14, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Compiler's Notes

Section 4 of the Transition Schedule provides: "Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed."

Convention Notes

(1) No change except in grammar [Art. VIII, sec. 29]. (2) Supreme Court justice terms increased from six to eight years, district court judges from four to six and justices of the peace from two to four years [Art. VIII, secs. 7, 12, 20].

Cross-References

District court judges, salary, sec. 93-303.

Justices of the peace, fees and salaries, sec. 25-301 et seq.

Supreme court chief justice and justices, salaries, sec. 25-501.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 7, 12, 20 and 29, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 8. Selection. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election

contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Convention Notes

Revises 1889 constitution [Art. VIII, secs. 6, 8, 12]. Contested election of judges is not changed, however if a judge in office does not have an opponent in an election his name will be put on the ballot anyway and the people asked to approve or reject him. If rejected, the governor appoints another judge. When there is a vacancy (such as death or resignation) the governor appoints a replacement but does not have unlimited choice of lawyers as under 1889 constitution [Art. VIII, sec. 34]. He must choose his appointee from a list of nominees and the appointment must be confirmed by the senate—a new requirement.

Decisions under Former Provisions

For decisions relating to provisions in the 1889 Constitution, see annotations following secs. 12 and 34, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Convention Notes

(1) Revises 1889 constitution [Art. VIII, secs. 10, 16] by making residency requirements for candidates for district court judgeship the same as for supreme court and by deleting age requirements. Requirement for five years of law practice new. (2) Revises 1889 constitution [Art. VIII, sec. 30] by specifically allowing travel expense. (3) Only change [Art. VIII, secs. 31 and 35] specifically prohibits a judge from holding office in a political party. (4) No change except in grammar [Art. VIII, sec. 33].

Cross-References

Qualifications and residence of judicial officers, sec. 93-701 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 16, 30, 31 and 35, Art. VIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Convention Notes

New provision. A judge may not run for any other public office, or be out of state for more than 60 days. [See 1889 constitution Art. VIII, sec. 37.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 37, Art. VIII of the 1889 Constitution in bound Volume One, Part 1.

Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Convention Notes

New provision. A judicial standards commission may investigate whenever a judge, because of disability or bad habits, does not perform his duties properly. The commission can recommend to the supreme court that the judge be retired, censured, suspended or removed.

ARTICLE VIII
REVENUE AND FINANCE

Section
1. Tax purposes.
2. Tax power inalienable.
3. Property tax administration.
4. Equal valuation.
5. Property tax exemptions.
6. Highway revenue non-diversion.
7. Tax appeals.
8. State debt.
9. Balanced budget.
10. Local government debt.
11. Use of loan proceeds.
12. Strict accountability.
13. Investment of public funds.
14. Prohibited payments.

Section 1. Tax purposes. Taxes shall be levied by general laws for public purposes.

Convention Notes

Revises 1889 constitution [Art. XII] by eliminating references to particular kinds of revenue sources (such as property taxes, license fees, and income taxes) and continues the legislative power to determine tax structures.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Tax power inalienable. The power to tax shall never be surrendered, suspended, or contracted away.

Convention Notes

New section which limits the power to tax to government.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 7, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Convention Notes

Revises 1889 constitution [Art. XII, sec. 15] by removing references to county boards of equalization and state board of equalization leaving the legislature free to determine the method of securing property tax equalization.

Cross-References

Classification of property for taxation, sec. 84-301.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Convention Notes

No change except in grammar [Art. XII, sec. 5]. Guarantees the same assessed value will be used by all taxing authorities.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XII of the 1889 Constitution in bound Volume One, Part 1.

Section 5. Property tax exemptions. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Convention Notes

1889 constitution [Art. XII, sec. 2] makes it mandatory that all property listed in subsection (1) (a) be exempt from taxation. Revision leaves all exemptions at discretion of legislature. Specifically permits taxation of **private interests** in government-owned property and assessment of special improvement district charges on tax exempt property.

Cross-References

Exemptions from taxation, sec. 84-202.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales

and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Convention Notes

Revises 1956 amendment to the 1889 constitution [Art. XII, sec. 1b] by removing motor vehicle registration fees from the earmarking provision; by including local government road and street systems, highway safety programs and driver education programs as permissible uses of earmarked funds; and by allowing the legislature by a three-fifths vote to divert the earmarked funds to other purposes.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations under sec. 1 b, Art. XII of the 1889 Constitution in this supplement.

Section 7. Tax appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Convention Notes

New provision requiring the legislature to establish procedures for taxpayer appeals. Appeal procedures must include an opportunity to have the complaint heard at the local level.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 8. State debt. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Convention Notes

Revises 1889 constitution [Art. XIII, sec. 2] by replacing obsolete $100,000 limit on state debt with provision that only a 2/3 vote of the legislature or majority vote at an election may create state debt.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.

Convention Notes

No change except in grammar [Art. XII, sec. 12]. Requires legislature to stay within estimated revenue limits when appropriating funds.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 12, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. Local government debt. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Convention Notes

Revises 1889 constitution [Art. XIII, secs. 5, 6]. Debt limitations for all local governmental entities will be set by law rather than by the constitution.

Cross-References

County indebtedness, limit, sec. 16-807.

Municipal indebtedness, limit, secs. 11-966, 11-2303.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 5 and 6, Art. XIII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Convention Notes

No change except in grammar [Art. XIII, sec. 3].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. XIII of the 1889 Constitution in bound Volume One, Part 1.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Convention Notes

Revises 1889 constitution [Art. XII, sec. 13] by leaving specific details of accounting procedures, reporting requirements, etc. to the legislature.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 13, Art. XII of the 1889 Constitution in bound Volume One, Part 1.

Section 13. Investment of public funds. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Convention Notes

Revises 1889 constitution [Art. XXI] by providing for a unified investment program for all state funds. Allows retirement funds to be invested in private corporate stock, but provides that the public school fund and university system funds may be invested only in interest bearing securities.

Cross-References

Board of investments, creation, transfer of investment functions, secs. 82A-204, 82A-205.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 8 and 17, Art. XXI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Convention Notes

No change except in grammar [Art. V, sec. 34 and Art. XII, sec. 10].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 34, Art. V, and following sec. 10, Art. XII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section
1. Protection and improvement.
2. Reclamation.
3. Water rights.
4. Cultural resources.

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Convention Notes

New provision creating a duty of the state and its people to protect and improve the environment.

Cross-References

Environmental Policy Act, secs. 69-6501 et seq.

Fish and game department, creation, sec. 82A-2001.

Health and environmental sciences, department created, sec. 82A-601.

Natural resources and conservation, department created, sec. 82A-1501.

State lands, department created, sec. 82A-1101.

Section 2. Reclamation. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Convention Notes

New provision requiring restoration of land after removal of natural resources.

Cross-References

Open-cut mining lands, reclamation, secs. 50-1501 to 50-1516.

Strip-mining lands, reclamation, secs. 50-1034 to 50-1057.

Surface and underground mining lands, reclamation, secs. 50-1201 to 50-1224.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Convention Notes

(1) New provision guaranteeing all existing rights to the use of water. (2) No change except in grammar [Art. III, sec. 15]. (3) New provision recognizing state ownership of all water subject to use and appropriation by its people. (4) New provision requiring legislature to pass laws establishing a central records system so that records of water rights may be found in a single location as well as locally.

Cross-References

Centralized records of water rights, secs. 89-865 to 89-8-102.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 15, Art. III of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Convention Notes

New provision. Self-explanatory.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section
1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.

5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Non-discrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Convention Notes

Revises 1889 Constitution [Art. XI, secs. 1, 6, 7]. Expresses the goal of the State to educate all of its citizens regardless of their ages. Creates a right to equal educational opportunity and specifically recognizes unique heritage of Indians.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1, 6 and 7, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Public school fund. The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Convention Notes

No change except in grammar [Art. XI, sec. 2]. Gives constitutional recognition to the public school fund.

Cross-References

Public school fund, sec. 75-7301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 2, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Convention Notes

No change except in grammar [Art. XI, sec. 3].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 3, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 4] by adding state auditor to board of land commissioners and adding the power to exchange lands.

Cross-References

Powers and duties of board of land commissioners, sec. 81-103.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 4, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 5] by replacing specific language requiring distribution to be made "in proportion to the number of children between ages of 6 and 21" with general language that the income be "equitably apportioned" and by allowing distribution of interest and income moneys to high schools as well as elementary schools.

Cross-References

Apportionment from fund, sec. 75-6908.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XI of the 1889 Constitution in bound Volume One, Part 1.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 8] by specifying that federal funds may be distributed to private schools. Proposed section still prohibits state aid to private schools.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Convention Notes

Last sentence revises 1889 constitution [Art. XI, sec. 9] (which merely forbade denying any person entrance to a university because of his or her sex) by broadening the language to include all public educational institutions and to include other kinds of discrimination. Other changes in grammar only.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XI of the 1889 Constitution in this supplement.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Convention Notes

New provision which guarantees control of schools to local boards. Deletes requirement in 1889 constitution [Art. XI, sec. 10] that elections for school district officers must be separate from state and county elections.

Cross-References

School district trustees, sec. 75-5901 et seq.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio nonvoting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Convention Notes

Revises 1889 constitution [Art. XI, sec. 11] by creating one board (Board of Public Education) to supervise the public school system and a separate board (Board of Regents of Higher Education) to supervise the university system. The two boards together form one board (Board of Education) for considering mutual problems. Under 1889 constitution there is just one board to supervise the entire educational system. Each of the two proposed boards consists of 7 persons appointed by the governor (one less than in 1889 constitution). The governor and superintendent are ex officio, non-voting members (the attorney general is an ex officio member in 1889 constitution).

Cross-References

Division of powers among boards, sec. 75-5617.

State board of education and component boards, secs. 75-5609 to 75-5619.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 11, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Convention Notes

No change except in grammar [Art. XI, sec. 12]. (Section 13 of Article VIII, REVENUE AND FINANCE provides for the investment of university funds.)

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 12, Art. XI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be dis-

posed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Convention Notes

Only changes in subsections (1), (2) and (3) are in grammar. Subsection (4) revises 1889 constitution by deleting the 1889 constitutional classification of property into grazing, timber, agricultural or city lands and by stipulating that public lands may be exchanged. [Art. XVII, secs. 1, 2, 3.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 2, Art. XVII of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE XI

LOCAL GOVERNMENT

Section
1. Definition.
2. Counties.
3. Forms of government.
4. General powers.
5. Self-government charters.
6. Self-government powers.
7. Intergovernmental cooperation.
8. Initiative and referendum.
9. Voter review of local government.

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Convention Notes

New provision defining the term "local government unit" to include counties, cities and towns.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Convention Notes

Revises 1889 constitution [Art. XVI, sec. 2] by requiring only **majority of those voting** to approve county seat or boundary changes. 1889 constitution requires **majority of qualified electors.** [See also 1889 constitution Art. XVI, sec. 1.]

Cross-References

County boundaries, sec. 16-201 et seq.

Removal of county seat, sec. 16-301 et seq.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 2, Art. XVI of the 1889 Constitution in bound Volume One, Part 1.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incor-

porating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Convention Notes

New provision directing legislature to provide alternative forms of city and county or city-county governments, one of which must be the "traditional" form including the elected officials listed. Two or more counties may agree to elect one official to serve a multicounty area. Offices within counties are subject to consolidation. [See Art. XVI, secs. 4, 5, 6, 7, 8.]

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 4 to 7, Art. XVI of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Convention Notes

New provision allowing legislature to grant legislative, administrative and other powers to local government units.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Convention Notes

New provision directing legislature to pass laws concerning procedures for local voters to design their own forms of government (self-government charters). The charter provisions concerning structure of local governments would take precedence over general laws on such matters.

Cross-References

County government, alternative forms, secs. 16-5001 to 16-5019.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Convention Notes

New provision allowing local government units to share powers with the state and to have all powers not specifically **denied.** At present local governments have only those powers specifically **granted.**

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Convention Notes

New provision allowing local governments to share services and functions with other units of government, the state and the United States.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Convention Notes

New provision directing legislature to give residents the power to initiate local ordinances by petition or to petition to vote on ordinances passed by local governments.

Cross-References

County initiative and referendum, secs. 37-301 to 37-311.

Municipal initiative and referendum, secs. 11-1104 to 11-1114.

Reservation of powers of initiative and referendum, 1972 Const. Art. V, sec. 1.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

Convention Notes

New provision. By 1976 the legislature must give local residents the opportunity to vote on whether or not to change their form of government. Laws must be passed requiring local forms of government to be studied and evaluated every ten years.

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section
1. Agriculture.
2. Labor.
3. Institutions and assistance.

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Convention Notes

(1) Revises 1889 constitution [Art. XVIII, sec. 1]. Provides that a department of agriculture will be one of the 20 departments in the executive branch. Deletes reference to a commissioner of agriculture. Directs legislature to provide money for agriculture. (2) Revises 1889 constitution [Art. XII, sec. 9] by extending the special mill levy on livestock to agriculture to be used for the benefit of both. Deletes reference to maximum levy allowed.

Cross-References

Department of agriculture, creation, sec. 82A-301.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 1, Art. XVIII of the 1889 Constitution in bound Volume One, Part 1.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Convention Notes

2. No change except in grammar [Art. XVIII, secs. 1, 4]. Provides that department of labor will be one of the 20 departments in the executive branch.

Cross-References

Department of labor and industry, creation, commissioner, sec. 82A-1001.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 4, Art. XVIII of the 1889 Constitution in bound Volume One, Part 1.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

Convention Notes

(1) No change except in grammar [Art. X, sec. 1]. (Deletes references to specific types of institutions.) (2) New provision that a person in an institution may exercise all rights except those that are impossible because of the confinement and that all rights are automatically restored when the person is released. (3) Revises 1889 constitution [Art. X, sec. 5] which states that the "several counties" must provide welfare. Revision leaves it up to the legislature to determine whether the state, county or a combination of the two must provide welfare.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 1 and 5, Art. X of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

ARTICLE XIII

GENERAL PROVISIONS

Section
1. Non-municipal corporations.
2. Consumer counsel.
3. Salary commission.
4. Code of ethics.
5. Exemption laws.
6. Perpetuities.

Section 1. Non-municipal corporations. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Convention Notes

(1) No change except in grammar [Art. XV, sec. 2]. (2) New provision requiring the legislature to pass consumer protection laws. (3) New provision prohibiting laws which would add liabilities to past contracts.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following secs. 2, 13 and 20, Art. XV of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Cross-References

Corporations, Title 15.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of

the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Convention Notes

New provision requiring legislature to create a state office to represent customers at hearings before the public service commission. Utility companies would be taxed to support the office.

Cross-References

Consumer counsel, secs. 70-701 to 70-709.

Section 3. Salary commission. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Convention Notes

New provision requiring legislature to create a committee which would suggest salary schedules for judges, legislators and executive officials.

Cross-References

Salary commission, secs. 59-1401 to 59-1404.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Convention Notes

New provision. The legislature must enact laws concerning conflict of interest involving legislators and other public officials.

Section 5. Exemption laws. The legislature shall enact liberal homestead and exemption laws.

Convention Notes

Identical to 1889 Constitution [Art. XIX, sec. 4].

Cross-References

Earnings exempt from execution, sec. 93-5816 et seq.

Homesteads, sec. 33-101 et seq.

Property exempt from execution, sec. 93-5813 et seq.

Decisions under Former Provisions

For decisions relating to identical provisions in the 1889 Constitution, see annotations following sec. 4, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

Convention Notes

Identical to 1889 Constitution [Art. XIX, sec. 5].

Cross-References

Rule against perpetuities, secs. 67-406, 67-407.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 5, Art. XIX of the 1889 Constitution in bound Volume One, Part 1.

ARTICLE XIV

CONSTITUTIONAL REVISION

Section
1. Constitutional convention.
2. Initiative for constitutional convention.
3. Periodic submission.

4. Call of convention.
5. Convention expenses.
6. Oath, vacancies.
7. Convention duties.
8. Amendment by legislative referendum.
9. Amendment by initiative.
10. Petition signers.
11. Submission.

Section 1. Constitutional convention. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Convention Notes

Adds word "unlimited" to 1889 constitution [Art. XIX, sec. 8]. Makes it clear that the legislature cannot call a constitutional convention for limited purpose.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 2. Initiative for constitutional convention. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Convention Notes

New provision. Enables people to petition to call a constitutional convention.

Cross-References

Initiative and referendum provisions of Article III not applicable to constitutional revision, Const. Art. III, sec. 8.

Initiative petition for constitutional convention, secs. 37-201, 37-203.

Section 3. Periodic submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Convention Notes

New provision. The question of holding a constitutional convention must be submitted to vote of the people at least once every 20 years.

Section 4. Call of convention. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts

as are the members of the legislative body determining the number of delegates.

Convention Notes

Revises 1889 constitution [Art. XIX, sec. 8]. Legislature shall determine whether constitutional convention delegates be elected on partisan or nonpartisan basis. (1889 constitution not explicit on this point. Montana Supreme Court held convention delegates must run on partisan basis.)

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 5. Convention expenses. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Convention Notes.

No change except in grammar [Art. XIX, sec. 8].

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 6. Oath, vacancies. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Convention Notes

No change except in grammar [Art. XIX, sec. 8].

Cross-References

Oath of office, Const. Art. III, sec. 3.

Vacancies in legislature, Const. Art. V, sec. 7.

Section 7. Convention duties. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Convention Notes

Only change is removal of requirements in 1889 constitution [Art. XIX, sec. 8] that a convention meet within a certain time after election and that the election on the proposed constitution be held within six months.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 8, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved

by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Convention Notes

Revises 1889 constitution [Art. XIX, sec. 9]. Legislature may propose constitutional amendment by a vote of two-thirds of total membership rather than two-thirds of each house. Provides for July effective date for amendments.

Cross-References

Publication of proposed constitutional amendments, sec. 23-2802.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Convention Notes

New provision. Ten percent of voters may propose constitutional amendments by petition.

Cross-References

Initiative and referendum provisions of Article III not applicable to constitutional revision, Const. Art. III, sec. 8.

Initiative petition for constitutional amendment, secs. 37-202, 37-203.

Publication of proposed constitutional amendments, sec. 23-2802.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Convention Notes

New provision. Self-explanatory.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Convention Notes

No change except in grammar [Art. XIX, sec. 9].

Cross-References

Attorney general's summary, sec. 37-104.1.

Publication and printing requirements, sec. 37-107.

Decisions under Former Provisions

For decisions relating to similar provisions in the 1889 Constitution, see annotations following sec. 9, Art. XIX of the 1889 Constitution in bound Volume One, Part 1, and in this supplement.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

LEO GRAYBILL, JR., PRESIDENT
JEAN M. BOWMAN, SECRETARY
MAGNUS AASHEIM
JOHN H. ANDERSON, JR.
OSCAR L. ANDERSON
HAROLD ARBANAS
FRANKLIN ARNESS
CEDOR B. ARONOW
WILLIAM H. ARTZ
THOMAS M. ASK
BETTY BABCOCK
LLOYD BARNARD
GRACE C. BATES
DON E. BELCHER
BEN E. BERG, JR.
E. M. BERTHELSON
CHET BLAYLOCK
VIRGINIA H. BLEND
GEOFFREY L. BRAZIER
BRUCE M. BROWN
DAPHNE BUGBEE
WILLIAM A. BURKHARDT
MARJORIE CAIN
BOB CAMPBELL
JEROME J. CATE
RICHARD J. CHAMPOUX
LYMAN W. CHOATE
MAX CONOVER
C. LOUISE CROSS
WADE J. DAHOOD
CARL M. DAVIS
DOUGLAS DELANEY
MAURICE DRISCOLL
DAVE DRUM
DOROTHY ECK
MARIAN S. ERDMANN
LESLIE ESKILDSEN
MARK ETCHART
JAMES R. FELT
DONALD R. FOSTER
NOEL D. FURLONG
J. C. GARLINGTON
E. S. GYSLER
OTTO T. HABEDANK
GENE HARBAUGH
ROD HANSON
R. S. HANSON
PAUL K. HARLOW
GEORGE HARPER
DANIEL W. HARRINGTON
GEORGE B. HELIKER
DAVID L. HOLLAND
ARNOLD W. JACOBSEN
GEORGE H. JAMES
TORREY B. JOHNSON
THOMAS F. JOYCE
A. W. KAMHOOT
ROBERT LEE KELLEHER
JOHN H. LEUTHOLD
JEROME T. LOENDORF
PETER "PETE" LORELLO
JOSEPH H. MCCARVEL
RUSSELL C. MCDONOUGH
MIKE MCKEON
CHARLES B. MCNEIL
CHARLES H. MAHONEY
RACHELL K. MANSFIELD
FRED J. MARTIN
J. MASON MELVIN
LYLE R. MONROE
MARSHALL MURRAY
ROBERT B. NOBLE
RICHARD A. NUTTING
MRS. THOMAS PAYNE
CATHERINE PEMBERTON
DONALD REBAL
ARLYNE E. REICHERT
MRS. MAE NAN ROBINSON
RICHARD B. ROEDER
GEORGE W. ROLLINS
MILES ROMNEY
STERLING RYGG

DON SCANLIN
JOHN M. SCHLITZ
HENRY SIDERIUS
CLARK E. SIMON
CARMAN M. SKARI
M. LYNN SPARKS
LUCILE SPEER
R. J. STUDER, SR.
MRS. JOHN JUSTIN (VERONICA) SULLIVAN
WILLIAM H. SWANBERG
JOHN H. TOOLE
MRS. EDITH M. VAN BUSKIRK
ROBERT VERMILLION
ROGER A. WAGNER
JACK K. WARD
MARGARET S. WARDEN
ARCHIE O. WILSON
ROBERT F. WOODMANSEY

TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date
Section 2. Delayed Effective Date
Section 3. Prospective Operation of Declaration of Rights
Section 4. Terms of Judiciary
Section 5. Terms of Legislators
Section 6. General Transition

Convention Notes

Provides for an orderly change from the 1889 constitution to the 1972 constitution.

Section 1. Accelerated effective date. Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Compiler's Notes

Section 1 of the Adoption Schedule provided: "This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect."

The Adoption Schedule, submitted with the proposed Constitution for limited purposes only, is not reprinted herein since the introduction to the schedule provided that it should not be published as a part of the new Constitution.

Convention Notes

Proposed section on annual legislative sessions and reapportionment of the legislature would be effective January 1, 1973. The reapportionment commission could then be appointed by the 1973 legislature and report its plan to the 1974 legislature.

Section 2. Delayed effective date. The provisions of sections 1, 2, and 3 of Article V, THE LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Convention Notes

Sections on size of legislature, election and terms of its members would become effective when the reapportionment plan becomes law. If this is in 1974 then elections would be held in November 1974 for new members of the legislature to take office January 1, 1975.

Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Convention Notes

Any new rights created in Article II take effect only after July 1, 1973. It does not create any rights for past events.

Section 4. Terms of judiciary. Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Convention Notes

Since the proposed constitution changes the length of terms of office of judges this provision makes it clear that all judges may serve to the end of the term for which they were elected.

Section 5. Terms of legislators. (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Convention Notes

(1) If the reapportionment and redistricting plan becomes effective after the 1974 legislative session, the terms of legislators serving in that session would end December 31, 1974. (2) Section 3, Article V provides that senators have four year terms but that one-half are elected every two years. This section provides that one-half of the senators first elected will have only two year terms.

Section 6. General transition. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

Convention Notes

Unless the proposed constitution specifically changes a law it will not affect any rights or duties or the validity of contracts, bonds, etc. All elected officials serve out their present terms.

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3076	Rep. Ch. 51, Sec. 2, L. 1971
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3525	Rep. Ch. 188, Sec. 4, L. 1959
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3669	Rep. Ch. 511, Sec. 58, L. 1973
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4246	Rep. Ch. 160, Sec. 24, L. 1965
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4259-4264	Rep. Ch. 99, Sec. 43, L. 1969
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5508	Rep. Ch. 67, Sec. 11, L. 1967
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5696	Rep. Ch. 232, Sec. 12, L. 1963
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5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963
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5917	Rep. Ch. 300, Sec. 143, L. 1967
5918-5928	Rep. Ch. 300, Sec. 143, L. 1967
5930-5953	Rep. Ch. 300, Sec. 143, L. 1967
5954	Rep. Ch. 264, Sec. 10-102, L. 1963
5955	Rep. Ch. 300, Sec. 143, L. 1967
5956	Rep. Ch. 264, Sec. 10-102, L. 1963
5957-6013	Rep. Ch. 300, Sec. 143, L. 1967
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6394	Rep. Ch. 342, Sec. 3, L. 1973
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6535	Rep. Ch. 264, Sec. 10-102, L. 1963
6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963
6648-6661.1	Rep. Ch. 300, Sec. 143, L. 1967
6721	Rep. Ch. 213, Sec. 3, L. 1959
6734	Rep. Ch. 213, Sec. 3, L. 1959
6736-6739	Rep. Ch. 213, Sec. 3, L. 1959
6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963
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7098-7106	Rep. Ch. 452, Sec. 46, L. 1973
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7125-7131	Rep. Ch. 452, Sec. 46, L. 1973
7133, 7134	Rep. Ch. 452, Sec. 46, L. 1973
7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963
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7618	Rep. Ch. 264, Sec. 10-102, L. 1963
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7633	Rep. Ch. 264, Sec. 10-102, L. 1963
7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963
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8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963
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8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963
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8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963
8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963
8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963
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8820	Rep. Ch. 470, Sec. 14, L. 1973
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55	1	Rep. Ch. 196, Sec. 15, L. 1965
58	1-3	Rep. Ch. 300, Sec. 143, L. 1967
69	1	51-411
	2	51-412
77	1	Rep. Ch. 129, Sec. 1, L. 1963
88	1-2	Rep. Ch. 300, Sec. 143, L. 1967
94	1	Rep. Ch. 264, Sec. 10-102, L. 1963
96	2(c-d)	Rep. Ch. 177, Sec. 51, L. 1965
	2(m)	Rep. Ch. 253, Sec. 2, L. 1973
	3(b)	Rep. Ch. 492, Sec. 2, L. 1973
	3(d)	Rep. Ch. 493, Sec. 2, L. 1973
	3(f)	Rep. Ch. 282, Sec. 2, L. 1973
	4(a-e)	Rep. Ch. 443, Sec. 6, L. 1973
	5	Rep. Ch. 443, Sec. 6, L. 1973
	6(i)	Rep. Ch. 154, Sec. 2, L. 1973
	6(u)	Rep. Ch. 445, Sec. 2, L. 1973
	6(v)	Rep. Ch. 444, Sec. 2, L. 1973
	6(kk)	Rep. Ch. 251, Sec. 2, L. 1973
	7(a)	Rep. Ch. 106, Sec. 1, L. 1973
	8(a-c)	Rep. Ch. 106, Sec. 1, L. 1973
	14(a-d)	Rep. Ch. 106, Sec. 1, L. 1973
	16(a)	Rep. Ch. 471, Sec. 2, L. 1973
	16(b)	Rep. Ch. 202, Sec. 2, L. 1973
	16(c)	Rep. Ch. 155, Sec. 2, L. 1973
	16(d)	Rep. Ch. 203, Sec. 2, L. 1973
	16(f)	Rep. Ch. 252, Sec. 2, L. 1973
	16(j)	Rep. Ch. 197, Sec. 1, L. 1959
	17(j)	Rep. Ch. 106, Sec. 1, L. 1973
	23	Rep. Ch. 147, Sec. 242, L. 1963
	40	Rep. Ch. 233, Sec. 3, L. 1969
96	50-51	Rep. Ch. 341, Sec. 30, L. 1969
	53-54	Rep. Ch. 341, Sec. 30, L. 1969
104	5	Rep. Ch. 225, Sec. 24, L. 1971
110	1-20	Rep. Ch. 368, Sec. 248, L. 1969
111	1	95-3011
113	2	93-6204, 93-6205, 93-6209 to 93-6211; in part Rep. Ch. 8, L. 1945 and Ch. 189, Sec. 2, L. 1963
114	1	Rep. Ch. 260, Sec. 12, L. 1967
122	1-36	Rep. Ch. 368, Sec. 248, L. 1969
126	1-2	Rep. Ch. 368, Sec. 248, L. 1969
128	1	Rep. Ch. 264, Sec. 10-102, L. 1963
133	1	Rep. Ch. 32, Sec. 1, L. 1953
135	1	Rep. Ch. 13, Sec. 84, L. 1961
141	Ch. I 2–7	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. II 1–4	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. III 2–14	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. IV 1–16	Rep. Ch. 197, Sec. 12–109, L. 1965
	18–19	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. V 1–5	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. VI 2–10	Rep. Ch. 197, Sec. 12–109, L. 1965
	12–14	Rep. Ch. 197, Sec. 12–109, L. 1965
	16	Rep. Ch. 197, Sec. 12–109, L. 1965
146	1–5	Rep. Ch. 197, Sec. 223, L. 1967

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2	1	Rep. Ch. 199, Sec. 101, L. 1965
9	1	Rep. Ch. 135, Sec. 2, L. 1967
12	1	Rep. Ch. 5, Sec. 496, L. 1971
18	1	Rep. Ch. 51, Sec. 2, L. 1971
19	1-2	Rep. Ch. 99, Sec. 43, L. 1969

Ch.	Sec.	Herein
26	1	Rep. Ch. 197, Sec. 223, L. 1967
37	1	S. M.R.Civ.P., Rule 4 D
	2-3	Rep. Ch. 189, Sec. 2, L. 1963
	4-5	S. M.R.Civ.P., Rule 4 D
38	1	Rep. Ch. 368, Sec. 248, L. 1969
39	1	46-247
	2	46-248
42	1	Rep. Ch. 5, Sec. 496, L. 1971
44	1	Unconstitutional, 246 F Supp 396
46	1-6	Rep. Ch. 271, Sec. 33, L. 1963
51	6	Rep. Ch. 93, Sec. 44, L. 1969
54	1–4	Rep. Ch. 2, Sec. 63, L. 1971
	9	Rep. Ch. 2, Sec. 63, L. 1971
57	1	Rep. Ch. 199, Sec. 101, L. 1965
60	1	Rep. Ch. 199, Sec. 101, L. 1965
61	1	Rep. Ch. 5, Sec. 496, L. 1971
63	1–6	Rep. Ch. 197, Sec. 12–109, L. 1965
69	1	Rep. Ch. 5, Sec. 496, L. 1971
80	1	51-403
	2	51-404
	3	51-405
	4	51-406
81	1–7	Rep. Ch. 5, Sec. 496, L. 1971
84	1	Rep. Ch. 491, Sec. 27, L. 1973
90	13-14	Rep. Ch. 147, Sec. 242, L. 1963
	17	Rep. Ch. 147, Sec. 242, L. 1963
93	1–5	Rep. Ch. 5, Sec. 496, L. 1971
101	1	Rep. Ch. 368, Sec. 248, L. 1969
103	1	Rep. Ch. 197, Sec. 223, L. 1967
106	1	Rep. Ch. 197, Sec. 12–109, L. 1965
110	1–3	Rep. Ch. 5, Sec. 496, L. 1971
115	1	Rep. Ch. 1, Sec. 4, L. 1965
116	1	Rep. Ch. 129, Sec. 1, L. 1963
119	1–6	Rep. Ch. 500, Sec. 20, L. 1973
123	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
124	10	Rep. Ch. 184, Sec. 8, L. 1961
	12	Rep. Ch. 184, Sec. 8, L. 1961
126	1–3	Rep. Ch. 197, Sec. 223, L. 1967
127	1	Rep. Ch. 5, Sec. 496, L. 1971
129	10, 11	Rep. Ch. 352, Sec. 1, L. 1973
134	1	Rep. Ch. 368, Sec. 248, L. 1969
137	1–4	Rep. Ch. 260, Sec. 12, L. 1967
140	2, 3	Rep. Ch. 342, Sec. 3, L. 1973
149	1	Rep. Ch. 300, Sec. 143, L. 1967
152	111	Rep. Ch. 67, Sec. 11, L. 1967
154	1-49	Rep. Ch. 264, Sec. 10-102, L. 1963
	56-59	Rep. Ch. 264, Sec. 10-102, L. 1963
	62	Rep. Ch. 264, Sec. 10-102, L. 1963
155	1-21	Rep. Ch. 368, Sec. 248, L. 1969
158	4	Rep. Ch. 138, Sec. 5, L. 1967
160	1-4	Rep. Ch. 18, Sec. 12, L. 1967
161	1	Rep. Ch. 342, Sec. 3, L. 1973
172	Ch. I 2–7	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. II 1–4	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. III 2–13	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. IV 1–13	Rep. Ch. 197, Sec. 12–109, L. 1965
	15–16	Rep. Ch. 197, Sec. 12–109, L. 1965
	Ch. XII 1–7	Rep. Ch. 197, Sec. 12–109, L. 1965
	9–26	Rep. Ch. 197, Sec. 12–109, L. 1965
173	38	Rep. Ch. 56, Sec. 1, L. 1969
	51	26-701
	52-53	Rep. Ch. 38, Sec. 2, L. 1963
	54	26-704
	55	26-705
	57	Rep. Ch. 38, Sec. 2, L. 1963

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173	66, 67	Rep. Ch. 221, Sec. 16, L. 1971
	70	Rep. Ch. 511, Sec. 58, L. 1973

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Ch.	Sec.	Herein
2	1	Rep. Ch. 300, Sec. 143, L. 1967
4	1	Rep. Ch. 5, Sec. 496, L. 1971
8	1	Rep. Ch. 196, Sec. 2, L. 1967
14	1-3	Rep. Ch. 198, Sec. 98, L. 1967
16	1	51-413
	2	51-414
27	1–10	Rep. Ch. 197, Sec. 223, L. 1967
29	1	Rep. Ch. 368, Sec. 248, L. 1969
35	3-5	Rep. Ch. 110, Sec. 4, L. 1969
36	1-13	Rep. Ch. 18, Sec. 12, L. 1967
37	1	Rep. Ch. 300, Sec. 143, L. 1967
38	1–5	Rep. Ch. 5, Sec. 496, L. 1971
41	1	Rep. Ch. 199, Sec. 101, L. 1965
52	1	Rep. Ch. 129, Sec. 1, L. 1963
58	1	Rep. Ch. 368, Sec. 248, L. 1969
60	1	46-3002
76	1	Rep. Ch. 197, Sec. 223, L. 1967
81	1	Rep. Ch. 420, Sec. 4, L. 1971
86	1-2	Rep. Ch. 107, Sec. 18, L. 1965
97	1-4	Rep. Ch. 368, Sec. 248, L. 1969
100	2	Rep. Ch. 443, Sec. 6, L. 1973
	4	Rep. Ch. 471, Sec. 2, L. 1973
	5	Rep. Ch. 202, Sec. 2, L. 1973
	6	Rep. Ch. 155, Sec. 2, L. 1973
	7	Rep. Ch. 203, Sec. 2, L. 1973
101	1	Rep. Ch. 266, Sec. 82, L. 1963
	2-3	Rep. Ch. 199, Sec. 101, L. 1965
101	4	Rep. Ch. 266, Sec. 82, L. 1963
	6-10	Rep. Ch. 266, Sec. 82, L. 1963
	11	Rep. Ch. 199, Sec. 101, L. 1965
	12-14	Rep. Ch. 266, Sec. 82, L. 1963
	15	Rep. Ch. 199, Sec. 101, L. 1965
	16	Rep. Ch. 266, Sec. 82, L. 1963
	18-28	Rep. Ch. 199, Sec. 101, L. 1965
	29	Rep. Ch. 266, Sec. 82, L. 1963
106	1-14	Rep. Ch. 107, Sec. 18, L. 1965
107	1-2	Rep. Ch. 202, Sec. 3, L. 1959
109	1-3	Rep. Ch. 129, Sec. 1, L. 1963
112	1	Rep. Ch. 129, Sec. 1, L. 1963
119	1-4	Rep. Ch. 300, Sec. 143, L. 1967
121	1-2	Rep. Ch. 300, Sec. 143, L. 1967
122	1	Rep. Ch. 129, Sec. 1, L. 1963
125	1-2	Rep. Ch. 300, Sec. 143, L. 1967
126	1	Rep. Ch. 129, Sec. 1, L. 1963
130	1	Rep. Ch. 368, Sec. 248, L. 1969
131	1	Rep. Ch. 129, Sec. 1, L. 1963
134	1–4	Rep. Ch. 144, Sec. 1, L. 1971
143	1–5	Rep. Ch. 197, Sec. 12–109, L. 1965
146	1	Rep. Ch. 264, Sec. 10-102, L. 1963
152	1	Rep. Ch. 264, Sec. 10-102, L. 1963
154	1	Rep. Ch. 202, Sec. 3, L. 1959
155	1	Rep. Ch. 160, Sec. 24, L. 1965
	4	Rep. Ch. 307, Sec. 27, L. 1967
157	1–3	Rep. Ch. 197, Sec. 223, L. 1967
160	1–4	Rep. Ch. 197, Sec. 12–109, L. 1965
161	1–7	Rep. Ch. 2, Sec. 63, L. 1971
162	1	Rep. Ch. 266, Sec. 82, L. 1963
	2-6	Rep. Ch. 199, Sec. 101, L. 1965

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177	1	Rep. Ch. 13, Sec. 84, L. 1961
183	1	Rep. Ch. 264, Sec. 10-102, L. 1963
189	1	Rep. Ch. 300, Sec. 143, L. 1967
193	1	Rep. Ch. 5, Sec. 496, L. 1971
196	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
	4–9	Rep. Ch. 5, Sec. 496, L. 1971
	11–16	Rep. Ch. 5, Sec. 496, L. 1971
	20	Rep. Ch. 5, Sec. 496, L. 1971
	23	Rep. Ch. 5, Sec. 496, L. 1971
	30, 31	Rep. Ch. 5, Sec. 496, L. 1971
	33	Rep. Ch. 5, Sec. 496, L. 1971
197	1	Rep. Ch. 56, Sec. 1, L. 1969
205	2-5	Rep. Ch. 158, Sec. 11, L. 1959
	8	Rep. Ch. 147, Sec. 242, L. 1963
	10	Rep. Ch. 158, Sec. 11, L. 1959
223	1–31	Rep. Ch. 256, Sec. 2, L. 1973
225	1–16	Rep. Ch. 430, Sec. 23, L. 1971
226	14	Rep. Ch. 194, Sec. 13, L. 1967

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Ch.	Sec.	Herein
4	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
5	1–13	S. Ch. 137, L. 1949
15	1–4	Rep. Ch. 197, Sec. 12–109, L. 1965
26	1	Rep. Ch. 189, Sec. 2, L. 1959
31	2–6	Rep. Ch. 13, Sec. 2, L. 1973

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Ch.	Sec.	Herein
4	1	Rep. Ch. 5, Sec. 496, L. 1971
6	1	Rep. Ch. 194, Sec. 13, L. 1967
9	1	Rep. Ch. 80, Sec. 14, L. 1961
10	1	Rep. Ch. 2, Sec. 63, L. 1971
11	1	Rep. Ch. 298, Sec. 9, L. 1973
35	1	Rep. Ch. 68, Sec. 10, L. 1967
36	1	S. M.R.App.Civ.P., Rules 9, 10, 25
42	1	Rep. Ch. 199, Sec. 101, L. 1965
43	1	Rep. Ch. 199, Sec. 101, L. 1965
48	1	Rep. Ch. 500, Sec. 20, L. 1973
55	1	Rep. Ch. 491, Sec. 27, L. 1973
	3	Rep. Ch. 491, Sec. 27, L. 1973
56	1-11	Rep. Ch. 300, Sec. 143, L. 1967
61	1	Rep. Ch. 266, Sec. 82, L. 1963
62	1	Rep. Ch. 199, Sec. 101, L. 1965
63	1	Rep. Ch. 5, Sec. 496, L. 1971
65	1	Rep. Ch. 79, Sec. 1, L. 1961
67	1	43-711.4
68	1	Rep. Ch. 266, Sec. 82, L. 1963
74	1	Rep. Ch. 99, Sec. 43, L. 1969
75	1–4	Rep. Ch. 5, Sec. 496, L. 1971
80	1	Rep. Ch. 300, Sec. 143, L. 1967
84	1	Rep. Ch. 18, Sec. 12, L. 1967
85	1	Rep. Ch. 251, Sec. 28, L. 1961
88	1	Rep. Ch. 368, Sec. 248, L. 1969
	3	Rep. Ch. 368, Sec. 248, L. 1969
95	1	Rep. Ch. 300, Sec. 143, L. 1967
104	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
108	2	Rep. Ch. 80, Sec. 14, L. 1961
124	1	Rep. Ch. 197, Sec. 223, L. 1967
126	1	43-711.2
131	1	Rep. Ch. 80, Sec. 14, L. 1961
133	1	Rep. Ch. 190, Sec. 1, L. 1959

Ch.	Sec.	Herein
140	1	Rep. Ch. 99, Sec. 43, L. 1969
	3	Rep. Ch. 99, Sec. 43, L. 1969
146	1–2	S. Ch. 137, L. 1949
147	21	Rep. Ch. 136, Sec. 1, L. 1961
163	1	Rep. Ch. 158, Sec. 11, L. 1959
164	1–4	Rep. Ch. 5, Sec. 496, L. 1971
175	1	Rep. Ch. 122, Sec. 12, L. 1965
186	1	Rep. Ch. 213, Sec. 9, L. 1963
187	5	Rep. Ch. 405, Sec. 120, L. 1973
192	2	Rep. Ch. 194, Sec. 13, L. 1967
	4	Rep. Ch. 194, Sec. 13, L. 1967
193	1, 2	Rep. Ch. 511, Sec. 58, L. 1973
	5	Rep. Ch. 511, Sec. 58, L. 1973
	16	Rep. Ch. 511, Sec. 58, L. 1973
	20	Rep. Ch. 511, Sec. 58, L. 1973
195	1-23	Rep. Ch. 250, Sec. 24, L. 1963
196	3	Rep. Ch. 252, Sec. 2, L. 1973
197	7	Rep. Ch. 177, Sec. 51, L. 1965
210	2	Rep. Ch. 13, Sec. 84, L. 1961
216	33	Rep. Ch. 39, Sec. 9, L. 1973
225	1	Rep. Ch. 13, Sec. 84, L. 1961
	2	S. M.R.App.Civ.P.
	3–4	S. M.R.App.Civ.P., Rules 9, 10, 25
	7	Rep. Ch. 13, Sec. 84, L. 1961
	8	S. M.R.Civ.P., Rule 59(d)
	9	S. M.R.App.Civ.P., Rules 9, 10, 25
	10	S. M.R.App.Civ.P., Rule 1
	11	S. M.R.App.Civ.P., Rule 5
	13–14	S. M.R.App.Civ.P., Rules 9, 10, 25
	15-18	Rep. Ch. 196, Sec. 2, L. 1967
228	1–12	Rep. Ch. 452, Sec. 46, L. 1973
229	1-2	Rep. Ch. 177, Sec. 51, L. 1965
	3–4	Rep. Ch. 68, Sec. 10, L. 1967
235	1	Rep. Ch. 368, Sec. 248, L. 1969
240	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
246	1-4	Rep. Ch. 368, Sec. 248, L. 1969
256	1–3	Rep. Ch. 307, Sec. 27, L. 1967
262	32	Rep. Ch. 147, Sec. 242, L. 1963
	33	Rep. Ch. 93, Sec. 44, L. 1969
263	1	Rep. Ch. 300, Sec. 143, L. 1967
264	1-3	Rep. Ch. 300, Sec. 143, L. 1967

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Ch.	Sec.	Herein
1	1	Rep. Ch. 156, Sec. 11, L. 1965
10	1–10	Rep. Ch. 197, Sec. 12–109, L. 1965
	13–16	Rep. Ch. 197, Sec. 12–109, L. 1965
	18	Rep. Ch. 197, Sec. 12–109, L. 1965
12	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 75, Sec. 1, L. 1961
17	1	Rep. Ch. 5, Sec. 496, L. 1971

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Ch.	Sec.	Herein
3	7	Rep. Ch. 100, Sec. 58, L. 1973
4	1–6	Rep. Ch. 5, Sec. 496, L. 1971
14	1	Rep. Ch. 5, Sec. 496, L. 1971
18	1	Rep. Ch. 5, Sec. 496, L. 1971
22	1	Rep. Ch. 314, Sec. 14, L. 1969
24	1–6	Rep. Ch. 197, Sec. 223, L. 1967
32	1	Rep. Ch. 264, Sec. 10-102, L. 1963

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34	1–4	Rep. Ch. 5, Sec. 496, L. 1971
41	5	Rep. Ch. 39, Sec. 9, L. 1973
42	1	Rep. Ch. 199, Sec. 101, L. 1965
43	1-2	Rep. Ch. 368, Sec. 248, L. 1969
49	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
55	1	Rep. Ch. 189, Sec. 2, L. 1963
56	1	Rep. Ch. 260, Sec. 12, L. 1967
61	1	Rep. Ch. 44, Sec. 7, L. 1961
77	17	Rep. Ch. 56, Sec. 1, L. 1969
	17½	Rep. Ch. 221, Sec. 16, L. 1971
	20-21	Rep. Ch. 38, Sec. 2, L. 1963
100	1	Rep. Ch. 264, Sec. 10-102, L. 1963
104	1	Rep. Ch. 75, Sec. 1, L. 1961; Ch. 5, Sec. 496, L. 1971
110	1-8	Rep. Ch. 147, Sec. 242, L. 1963
112	1-3	Rep. Ch. 198, Sec. 98, L. 1967
122	1	Rep. Ch. 5, Sec. 496, L. 1971
123	1	Rep. Ch. 5, Sec. 496, L. 1971
128	1–7	Rep. Ch. 5, Sec. 496, L. 1971
131	8(1)	Rep. Ch. 5, Sec. 496, L. 1971
133	1-2	Rep. Ch. 368, Sec. 248, L. 1969
143	1	Rep. Ch. 264, Sec. 10-102, L. 1963
145	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
148	1	Rep. Ch. 264, Sec. 10-102, L. 1963
151	1-3	Rep. Ch. 368, Sec. 248, L. 1969
164	1-8	Rep. Ch. 310, Sec. 1, L. 1969

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Ch.	Sec.	Herein
1	1–3	Rep. Ch. 305, Sec. 2, L. 1967
4	1	Rep. Ch. 196, Sec. 2, L. 1967
6	1–3	Rep. Ch. 152, Sec. 3, L. 1971
12	1-2	Rep. Ch. 368, Sec. 248, L. 1969
13	1	Rep. Ch. 197, Sec. 12–109, L. 1965
15	1	Rep. Ch. 368, Sec. 248, L. 1969
16	1	Rep. Ch. 368, Sec. 248, L. 1969
19	1	S. M.R.App.Civ.P., Rules 9, 10, 25
27	1-2	Rep. Ch. 300, Sec. 143, L. 1967
28	1-2	Rep. Ch. 300, Sec. 143, L. 1967
34	1	Rep. Ch. 197, Sec. 223, L. 1967
39	1	S. M.R.App.Civ.P., Rule 5
40	1-2	Rep. Ch. 250, Sec. 24, L. 1963
41	1	Rep. Ch. 127, Sec. 1, L. 1967; Ch. 2, Sec. 63, L. 1971
43	1	Rep. Ch. 405, Sec. 120, L. 1973
55	1	Rep. Ch. 300, Sec. 143, L. 1967
58	1	Rep. Ch. 368, Sec. 248, L. 1969
62	1	Rep. Ch. 5, Sec. 496, L. 1971
64	1	Rep. Ch. 368, Sec. 248, L. 1969
66	1–3	Rep. Ch. 2, Sec. 63, L. 1971
82	1	Rep. Ch. 5, Sec. 496, L. 1971
88	1	Rep. Ch. 79, Sec. 1, L. 1961
105	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
106	1	Rep. Ch. 194, Sec. 13, L. 1967
109	6	Rep. Ch. 97, Sec. 32, L. 1961
113	14	Rep. Ch. 256, Sec. 5, L. 1965
114	1	Rep. Ch. 75, Sec. 5, L. 1967
115	1	Rep. Ch. 99, Sec. 43, L. 1969
116	1	Rep. Ch. 264, Sec. 10-102, L. 1963
117	1	Rep. Ch. 443, Sec. 6, L. 1973
118	1	Rep. Ch. 368, Sec. 248, L. 1969

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120	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
121	1	Rep. Ch. 492, Sec. 2, L. 1973
	2	Rep. Ch. 154, Sec. 2, L. 1973
	4	Rep. Ch. 252, Sec. 2, L. 1973
	7	Rep. Ch. 106, Sec. 1, L. 1973
	10	Rep. Ch. 471, Sec. 2, L. 1973
	11	Rep. Ch. 202, Sec. 2, L. 1973
	12	Rep. Ch. 203, Sec. 2, L. 1973
126	1-2	Rep. Ch. 199, Sec. 101, L. 1965
	3	Rep. Ch. 266, Sec. 82, L. 1963
128	1	Rep. Ch. 197, Sec. 12–109, L. 1965
129	1	Rep. Ch. 197, Sec. 12–109, L. 1965
131	1	51-403
144	1-2	Rep. Ch. 147, Sec. 242, L. 1963
145	1	Rep. Ch. 264, Sec. 10-102, L. 1963
146	1	S. M.R.App.Civ.P., Rules 9, 10, 25
148	1	Unconstitutional, 134 M 355, 332 P 2d 501
149	1	Rep. Ch. 266, Sec. 82, L. 1963
151	1	Rep. Ch. 5, Sec. 496, L. 1971
159	1	Rep. Ch. 156, Sec. 11, L. 1965
160	1–5	Rep. Ch. 2, Sec. 63, L. 1971
185	1–4	S. Ch. 137, L. 1949
192	9	Rep. Ch. 511, Sec. 58, L. 1973

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Ch.	Sec.	Herein
3	1	Rep. Ch. 368, Sec. 248, L. 1969
4	1	Rep. Ch. 189, Sec. 2, L. 1959
5	1	Rep. Ch. 300, Sec. 143, L. 1967
6	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
7	1	Rep. Ch. 368, Sec. 248, L. 1969
8	1–7	Rep. Ch. 228, Sec. 8, L. 1967
14	1	Rep. Ch. 368, Sec. 248, L. 1969
17	1, 2	Rep. Ch. 369, Sec. 20, L. 1969
18	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	2	Rep. Ch. 42, Sec. 2, L. 1961
	3	Rep. Ch. 197, Sec. 12–109, L. 1965
19	1	Rep. Ch. 369, Sec. 20, L. 1969
	3	Rep. Ch. 369, Sec. 20, L. 1969
	4-8	Rep. Ch. 369, Sec. 20, L. 1969
	9-12	Rep. Ch. 369, Sec. 20, L. 1969
	13	Rep. Ch. 197, Sec. 12-109, L. 1965
	15	Rep. Ch. 369, Sec. 20, L. 1969
20	1	Rep. Ch. 99, Sec. 43, L. 1969
31	1	Rep. Ch. 300, Sec. 143, L. 1967
38	1, 2	Rep. Ch. 452, Sec. 46, L. 1973
49	1	Rep. Ch. 114, Sec. 1, L. 1971
50	1–9	Rep. Ch. 442, Sec. 9, L. 1973
51	1	Rep. Ch. 147, Sec. 242, L. 1963
53	1	Rep. Ch. 5, Sec. 496, L. 1971
59	1	Rep. Ch. 511, Sec. 58, L. 1973
	5	Rep. Ch. 511, Sec. 58, L. 1973
	19	Rep. Ch. 56, Sec. 1, L. 1969
	23-24	Rep. Ch. 38, Sec. 2, L. 1963
	27	Rep. Ch. 38, Sec. 2, L. 1963
60	1	Rep. Ch. 428, Sec. 116, L. 1973
	5–7	Rep. Ch. 428, Sec. 116, L. 1973
	8	81-105
	9	81-1122
	10	Rep. Ch. 93, Sec. 44, L. 1969
	12–14	Rep. Ch. 428, Sec. 116, L. 1973
	22	81-421.1
	30	Rep. Ch. 257, Sec. 10, L. 1965

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60	74	Rep. Ch. 184, Sec. 8, L. 1961
	77	Rep. Ch. 184, Sec. 8, L. 1961
	80	Rep. Ch. 428, Sec. 116, L. 1973
	98–105	Rep. Ch. 298, Sec. 9, L. 1973
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62	1	Rep. Ch. 368, Sec. 248, L. 1969
65	2	Rep. Ch. 198, Sec. 1, L. 1973
68	1	Rep. Ch. 338, Sec. 43, L. 1969
77	2	Rep. Ch. 5, Sec. 496, L. 1971
82	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
87	1	Rep. Ch. 5, Sec. 496, L. 1971
89	59	Rep. Ch. 129, Sec. 1, L. 1963
	73	Rep. Ch. 256, Sec. 6, L. 1971
	80-81	Rep. Ch. 264, Sec. 10-102, L. 1963
	89-90	Rep. Ch. 264, Sec. 10-102, L. 1963
	116	Rep. Ch. 264, Sec. 10-102, L. 1963
90	1	Rep. Ch. 129, Sec. 1, L. 1963
95	5–7	Rep. Ch. 147, Sec. 4, L. 1971
98	1	Rep. Ch. 368, Sec. 248, L. 1969
102	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
103	12	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
104	3	Rep. Ch. 99, Sec. 43, L. 1969
108	3	Rep. Ch. 428, Sec. 116, L. 1973
	9	Rep. Ch. 164, Sec. 1, L. 1969
	13, 14	Rep. Ch. 428, Sec. 116, L. 1973
	24	Rep. Ch. 428, Sec. 116, L. 1973
109	1-2	Rep. Ch. 153, Sec. 14, L. 1965
	3	Rep. Ch. 174, Sec. 16, L. 1961
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112	1-3	Rep. Ch. 1, Sec. 4, L. 1965
115	1–5	Rep. Ch. 5, Sec. 496, L. 1971
118	1–4	Rep. Ch. 5, Sec. 496, L. 1971
124	2	Rep. Ch. 99, Sec. 43, L. 1969
	3	Rep. Ch. 147, Sec. 242, L. 1963
125	1	Rep. Ch. 368, Sec. 248, L. 1969
126	1	Rep. Ch. 368, Sec. 248, L. 1969
	2	Rep. Ch. 156, Sec. 11, L. 1965
	8	Rep. Ch. 368, Sec. 248, L. 1969
	6-7	Rep. Ch. 156, Sec. 11, L. 1965
138	1	Rep. Ch. 5, Sec. 496, L. 1971
147	1–32	Rep. Ch. 5, Sec. 496, L. 1971
149	2	Rep. Ch. 271, Sec. 33, L. 1963
	4	Rep. Ch. 271, Sec. 33, L. 1963
151	1-3	Rep. Ch. 202, Sec. 3, L. 1959
152	1-4	Rep. Ch. 15, Sec. 1, L. 1959

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21	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
22	1	43-711.2
25	1	Rep. Ch. 368, Sec. 248, L. 1969
27	8	Rep. Ch. 177, Sec. 51, L. 1965
34	1	Rep. Ch. 368, Sec. 248, L. 1969
59	1	Rep. Ch. 197, Sec. 12–109, L. 1965
60	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
64	4	Rep. Ch. 25, Sec. 1, L. 1971
65	1	Rep. Ch. 5, Sec. 496, L. 1971
67	1	Rep. Ch. 368, Sec. 248, L. 1969
70	4-5	Rep. Ch. 147, Sec. 242, L. 1963
	6–9	Rep. Ch. 298, Sec. 9, L. 1973
	10	Rep. Ch. 147, Sec. 242, L. 1963

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70	11	Rep. Ch. 298, Sec. 9, L. 1973
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	16	Rep. Ch. 298, Sec. 9, L. 1973
73	2	Rep. Ch. 307, Sec. 27, L. 1967
77	1	Rep. Ch. 5, Sec. 496, L. 1971
80	1-6	Rep. Ch. 197, Sec. 223, L. 1967
81	1	Rep. Ch. 197, Sec. 12-109, L. 1965
82	1-2	Rep. Ch. 199, Sec. 101, L. 1965
83	1	Rep. Ch. 202, Sec. 3, L. 1959
87	1	S. M.R.App.Civ.P., Rule 1
92	4	Rep. Ch. 369, Sec. 20, L. 1969
93	1-3	Rep. Ch. 413, Sec. 51, L. 1971
	5-28	Rep. Ch. 413, Sec. 51, L. 1971
	29-30	Rep. Ch. 99, Sec. 43, L. 1969
	31	Rep. Ch. 413, Sec. 51, L. 1971
	33-39	Rep. Ch. 413, Sec. 51, L. 1971
	42-55	Rep. Ch. 413, Sec. 51, L. 1971
94	1-6	Rep. Ch. 232, Sec. 9, L. 1961
95	1	Rep. Ch. 2, Sec. 63, L. 1971
96	1	Rep. Ch. 129, Sec. 1, L. 1963
97	1-10	Rep. Ch. 370, Sec. 1, L. 1973
102	2	Rep. Ch. 5, Sec. 496, L. 1971
103	1	Rep. Ch. 196, Sec. 15, L. 1965
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	10	Rep. Ch. 177, Sec. 51, L. 1965
105	1-28	Rep. Ch. 236, Sec. 30, L. 1963
109	1	Rep. Ch. 5, Sec. 496, L. 1971
110	1	Rep. Ch. 361, Sec. 7, L. 1969
114	1	Rep. Ch. 300, Sec. 143, L. 1967
117	1-4	Rep. Ch. 300, Sec. 143, L. 1967
118	1	Rep. Ch. 5, Sec. 496, L. 1971
121	1-6	Rep. Ch. 101, Sec. 1, L. 1959
123	1	Rep. Ch. 5, Sec. 496, L. 1971
124	2	Rep. Ch. 229, Sec. 14, L. 1967
135	1	Rep. Ch. 405, Sec. 120, L. 1973
144	1	Rep. Ch. 5, Sec. 496, L. 1971
146	1	Rep. Ch. 5, Sec. 496, L. 1971
149	1	Rep. Ch. 199, Sec. 101, L. 1965
151	4-7	Rep. Ch. 44, Sec. 7, L. 1961
167	1	Rep. Ch. 256, Sec. 6, L. 1971
168	1	Rep. Ch. 369, Sec. 20, L. 1969
173	1-5	Rep. Ch. 15, Sec. 1, L. 1959
175	1	Rep. Ch. 369, Sec. 20, L. 1969
176	1	Rep. Ch. 197, Sec. 12-109, L. 1965
177	1	Rep. Ch. 106, Sec. 1, L. 1973
	2	Rep. Ch. 155, Sec. 2, L. 1973
	4	Rep. Ch. 197, Sec. 1, L. 1959
	12	Rep. Ch. 471, Sec. 2, L. 1973
	13	Rep. Ch. 202, Sec. 2, L. 1973
	14	Rep. Ch. 203, Sec. 2, L. 1973
	15	Rep. Ch. 252, Sec. 2, L. 1973
178	1	Rep. Ch. 197, Sec. 12-109, L. 1965
179	1-5	Rep. Ch. 251, Sec. 28, L. 1961

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3	1	Rep. Ch. 99, Sec. 16, L. 1973
6	4	Rep. Ch. 369, Sec. 20, L. 1969
8	1-2	Rep. Ch. 300, Sec. 143, L. 1967
9	1	Rep. Ch. 147, Sec. 242, L. 1963

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19	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
25	1	Rep. Ch. 5, Sec. 496, L. 1971
26	1	Rep. Ch. 298, Sec. 9, L. 1973
32	1	Rep. Ch. 260, Sec. 12, L. 1967
33	1	Rep. Ch. 300, Sec. 143, L. 1967
35	1	Rep. Ch. 300, Sec. 143, L. 1967
38	1-4	Rep. Ch. 300, Sec. 143, L. 1967
39	2–6	Rep. Ch. 413, Sec. 51, L. 1971
	7	Rep. Ch. 99, Sec. 43, L. 1969
	8–11	Rep. Ch. 413, Sec. 51, L. 1971
40	1-2	Rep. Ch. 300, Sec. 143, L. 1967
42	1	Rep. Ch. 300, Sec. 143, L. 1967
45	1	Rep. Ch. 300, Sec. 143, L. 1967
46	1	Rep. Ch. 264, Sec. 10-102, L. 1963
47	1	Rep. Ch. 300, Sec. 143, L. 1967
52	1-2	Rep. Ch. 300, Sec. 143, L. 1967
58	1	Rep. Ch. 117, Sec. 1, L. 1973
59	1	Rep. Ch. 13, Sec. 84, L. 1961
60	1	Rep. Ch. 199, Sec. 101, L. 1965
70	2-3	Rep. Ch. 189, Sec. 2, L. 1963
72	1	Rep. Ch. 5, Sec. 496, L. 1971
75	1	S. Ch. 137, L. 1949
80	1	46-3005
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81	1	Rep. Ch. 147, Sec. 4, L. 1971
84	1	Rep. Ch. 5, Sec. 496, L. 1971
90	1	Rep. Ch. 5, Sec. 496, L. 1971
93	1	Rep. Ch. 197, Sec. 223, L. 1967
100	1, Subd. 14	Rep. Ch. 391, Sec. 113, L. 1973
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105	6	Rep. Ch. 93, Sec. 44, L. 1969
106	1-4	Rep. Ch. 264, Sec. 10-102, L. 1963
107	1	Rep. Ch. 264, Sec. 10-102, L. 1963
109	1–22	Rep. Ch. 123, Sec. 23, L. 1973
110	1	Rep. Ch. 174, Sec. 16, L. 1961
116	1-5	Rep. Ch. 300, Sec. 143, L. 1967
118	1–3	Rep. Ch. 197, Sec. 223, L. 1967
122	1	Rep. Ch. 5, Sec. 496, L. 1971
129	1	Rep. Ch. 205, Sec. 1, L. 1969
136	1	Rep. Ch. 196, Sec. 2, L. 1967
139	2	Rep. Ch. 252, Sec. 2, L. 1973
144	1	Rep. Ch. 197, Sec. 12–109, L. 1965
146	1–6	Rep. Ch. 5, Sec. 496, L. 1971
	8–10	Rep. Ch. 5, Sec. 496, L. 1971
	12–26	Rep. Ch. 5, Sec. 496, L. 1971
147	1	Rep. Ch. 5, Sec. 496, L. 1971
148	1	Rep. Ch. 5, Sec. 496, L. 1971
	3–13	Rep. Ch. 5, Sec. 496, L. 1971
	15–17	Rep. Ch. 5, Sec. 496, L. 1971
	19–43	Rep. Ch. 5, Sec. 496, L. 1971
	45–79	Rep. Ch. 5, Sec. 496, L. 1971
	81	Rep. Ch. 5, Sec. 496, L. 1971
	83–85	Rep. Ch. 5, Sec. 496, L. 1971
	95–104	Rep. Ch. 5, Sec. 496, L. 1971
	105	Rep. Ch. 318, Sec. 1, L. 1969
	106–110	Rep. Ch. 5, Sec. 496, L. 1971
150	1	Rep. Ch. 196, Sec. 2, L. 1967
151	1-8	Rep. Ch. 199, Sec. 101, L. 1965
153	1-11	Rep. Ch. 55, Sec. 3, L. 1965
156	1	Rep. Ch. 199, Sec. 101, L. 1965
160	7	Rep. Ch. 413, Sec. 5, L. 1973

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164	1	Rep. Ch. 5, Sec. 496, L. 1971
169	1-6	Rep. Ch. 300, Sec. 143, L. 1967
	7A	Rep. Ch. 300, Sec. 143, L. 1967
170	1	Rep. Ch. 300, Sec. 143, L. 1967
175	1	Rep. Ch. 369, Sec. 20, L. 1969
176	2	Rep. Ch. 80, Sec. 14, L. 1961
177	1	Rep. Ch. 199, Sec. 1, L. 1961
179	1	Rep. Ch. 197, Sec. 12–109, L. 1965
184	4	Rep. Ch. 201, Sec. 7, L. 1961
	6	Rep. Ch. 201, Sec. 7, L. 1961
188	2	Rep. Ch. 197, Sec. 12–109, L. 1965
189	7	Rep. Ch. 71, Sec. 3, L. 1973
192	1	Rep. Ch. 174, Sec. 16, L. 1961
194	1-3	Rep. Ch. 251, Sec. 28, L. 1961
196	1	Rep. Ch. 15, Sec. 1, L. 1959
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2	1	Rep. Ch. 197, Sec. 12–109, L. 1965
4	1	Rep. Ch. 368, Sec. 248, L. 1969
6	1	Rep. Ch. 368, Sec. 248, L. 1969
7	1	Rep. Ch. 250, Sec. 24, L. 1963
9	1	Rep. Ch. 5, Sec. 496, L. 1971
15	1	Rep. Ch. 368, Sec. 248, L. 1969
16	2	Rep. Ch. 5, Sec. 496, L. 1971
	4	Rep. Ch. 5, Sec. 496, L. 1971
26	1	Rep. Ch. 197, Sec. 223, L. 1967
28	1	Rep. Ch. 368, Sec. 248, L. 1969
31	2	Rep. Ch. 99, Sec. 43, L. 1969
34	1	Rep. Ch. 13, Sec. 84, L. 1961
37	1	Rep. Ch. 5, Sec. 496, L. 1971
39	1	Rep. Ch. 413, Sec. 51, L. 1971
46	1–7	Rep. Ch. 118, Sec. 32, L. 1969
	9–12	Rep. Ch. 118, Sec. 32, L. 1969
47	1–8	Rep. Ch. 251, Sec. 28, L. 1961
56	1–7	Rep. Ch. 123, Sec. 23, L. 1973
61	1-2	Rep. Ch. 368, Sec. 248, L. 1969
62	1	Rep. Ch. 368, Sec. 248, L. 1969
64	1	Rep. Ch. 500, Sec. 20, L. 1973
105	4	Rep. Ch. 42, Sec. 1, L. 1973
	18–27	Rep. Ch. 154, Sec. 17, L. 1965
	52	Rep. Ch. 154, Sec. 17, L. 1965
	57	Rep. Ch. 154, Sec. 17, L. 1965
	60-61	Rep. Ch. 154, Sec. 17, L. 1965
	63	Rep. Ch. 154, Sec. 17, L. 1965
	96	Rep. Ch. 147, Sec. 242, L. 1963
110	1	Rep. Ch. 174, Sec. 16, L. 1961
126	1-6	Rep. Ch. 101, Sec. 1, L. 1959
134	1	S. Ch. 137, L. 1949
138	1	Rep. Ch. 493, Sec. 2, L. 1973
139	2	Rep. Ch. 298, Sec. 9, L. 1973
146	1	Rep. Ch. 80, Sec. 14, L. 1961
148	2	Rep. Ch. 314, Sec. 14, L. 1969
153	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
157	1-4	Rep. Ch. 369, Sec. 20, L. 1969
162	1	Rep. Ch. 5, Sec. 496, L. 1971
163	1	Rep. Ch. 5, Sec. 496, L. 1971
167	1-3	Rep. Ch. 158, Sec. 11, L. 1959
168	1	Rep. Ch. 99, Sec. 43, L. 1969

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170	1	Rep. Ch. 369, Sec. 20, L. 1969
173	1	Rep. Ch. 366, Sec. 27, L. 1969
175	1	Rep. Ch. 5, Sec. 496, L. 1971
178	1–7	Rep. Ch. 5, Sec. 496, L. 1971
	9, 10	Rep. Ch. 5, Sec. 496, L. 1971
	12–18	Rep. Ch. 5, Sec. 496, L. 1971
	20–26	Rep. Ch. 5, Sec. 496, L. 1971
	27	Rep. Ch. 151, Sec. 8, L. 1961
	28, 29	Rep. Ch. 5, Sec. 496, L. 1971
	31	Rep. Ch. 5, Sec. 496, L. 1971
183	1	Rep. Ch. 5, Sec. 496, L. 1971
188	1-11	Rep. Ch. 368, Sec. 248, L. 1969

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34	1	Rep. Ch. 5, Sec. 496, L. 1971
35	1	Rep. Ch. 158, Sec. 7, L. 1967
	17–19	Rep. Ch. 452, Sec. 46, L. 1973

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3	1	Rep. Ch. 368, Sec. 248, L. 1969
6	1	Rep. Ch. 1, Sec. 4, L. 1965
12	1	Rep. Ch. 199, Sec. 101, L. 1965
25	1	Rep. Ch. 368, Sec. 248, L. 1969
26	1–7	S. Ch. 137, L. 1949
27	1-7	Rep. Ch. 368, Sec. 248, L. 1969
28	1	Rep. Ch. 2, Sec. 63, L. 1971
31	1	Rep. Ch. 368, Sec. 248, L. 1969
33	1	Rep. Ch. 368, Sec. 248, L. 1969
40	1	Rep. Ch. 5, Sec. 496, L. 1971
41	5	Rep. Ch. 511, Sec. 58, L. 1973
42	1	Rep. Ch. 196, Sec. 2, L. 1967
45	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
53	1	Rep. Ch. 196, Sec. 2, L. 1967
54	1	Rep. Ch. 196, Sec. 2, L. 1967
56	1	Rep. Ch. 405, Sec. 120, L. 1973
57	2	Rep. Ch. 202, Sec. 3, L. 1959
59	1	Rep. Ch. 266, Sec. 82, L. 1963
64	1	Rep. Ch. 205, Sec. 2, L. 1971
65	2	Rep. Ch. 147, Sec. 242, L. 1963
67	1-7	Rep. Ch. 55, Sec. 3, L. 1965
71	1	Rep. Ch. 368, Sec. 248, L. 1969
84	2	Rep. Ch. 99, Sec. 43, L. 1969
90	1–3	Rep. Ch. 118, Sec. 32, L. 1969
94	1	Rep. Ch. 15, Sec. 1, L. 1959
100	3	Rep. Ch. 6, Sec. 2, Ex. L. 1969
103	1	Rep. Ch. 13, Sec. 84, L. 1961
107	1	Rep. Ch. 197, Sec. 12–109, L. 1965
112	1	Rep. Ch. 264, Sec. 10-102, L. 1963
115	1	Rep. Ch. 5, Sec. 496, L. 1971
116	1	Rep. Ch. 369, Sec. 20, L. 1969
	2	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969
127	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
	3–6	Rep. Ch. 184, Sec. 8, L. 1961
134	1–4	Rep. Ch. 430, Sec. 5, L. 1973
144	1–3	Rep. Ch. 5, Sec. 496, L. 1971
145	1	Rep. Ch. 300, Sec. 143, L. 1967
147	2	Rep. Ch. 174, Sec. 16, L. 1961
158	1	Rep. Ch. 428, Sec. 116, L. 1973

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167	1	Rep. Ch. 56, Sec. 1, L. 1969
169	7	Rep. Ch. 147, Sec. 242, L. 1963
176	1–9	Rep. Ch. 19, Sec. 10, L. 1967
180	1-6	Rep. Ch. 199, Sec. 101, L. 1965
182	1-11	Rep. Ch. 368, Sec. 248, L. 1969
	13	Rep. Ch. 368, Sec. 248, L. 1969
	14	Rep. Ch. 20, Sec. 3, L. 1959
	15	Rep. Ch. 368, Sec. 248, L. 1969
193	1	Rep. Ch. 5, Sec. 496, L. 1971
198	1-5	Rep. Ch. 199, Sec. 101, L. 1965
199	1	15-22-141
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2	1	Rep. Ch. 368, Sec. 248, L. 1969
3	1	Rep. Ch. 154, Sec. 17, L. 1965
7	1	Rep. Ch. 5, Sec. 496, L. 1971
8	1	Rep. Ch. 13, Sec. 84, L. 1961
10	4	Rep. Ch. 189, Sec. 2, L. 1963
30	1	Rep. Ch. 42, Sec. 1, L. 1973
31	1	Rep. Ch. 300, Sec. 143, L. 1967
33	1	Rep. Ch. 80, Sec. 14, L. 1961
36	3	Rep. Ch. 428, Sec. 116, L. 1973
40	2-3	Rep. Ch. 82, Sec. 4, L. 1961
42	1-11	Unconstitutional, 139 M 15, 359 P 2d 644
44	1	Rep. Ch. 1, Sec. 4, L. 1965
46	1	43-711.2
	2	Rep. Ch. 158, Sec. 11, L. 1959
	4	Rep. Ch. 80, Sec. 14, L. 1961
47	1	Rep. Ch. 405, Sec. 120, L. 1973
50	1-2	Rep. Ch. 1, Sec. 4, L. 1965
53	1	Rep. Ch. 106, Sec. 1, L. 1973
57	1	Rep. Ch. 5, Sec. 496, L. 1971
58	1	Rep. Ch. 2, Sec. 63, L. 1971
61	1	Rep. Ch. 368, Sec. 248, L. 1969
64	1	Rep. Ch. 452, Sec. 46, L. 1973
68	2–7	Rep. Ch. 413, Sec. 51, L. 1971
81	1	Rep. Ch. 205, Sec. 2, L. 1971
82	Part 2, Sec. 2, (a)	Rep. Ch. 152, Sec. 2, L. 1973
86	1-11	Rep. Ch. 72, Sec. 1, L. 1959
87	1–10	Rep. Ch. 5, Sec. 496, L. 1971
	12–14	Rep. Ch. 5, Sec. 496, L. 1971
	16	Rep. Ch. 5, Sec. 496, L. 1971
88	1	Rep. Ch. 198, Sec. 98, L. 1967
96	1	Rep. Ch. 369, Sec. 20, L. 1969
102	1	Rep. Ch. 197, Sec. 12–109, L. 1965
106	1	Rep. Ch. 118, Sec. 32, L. 1969
110	1	Rep. Ch. 5, Sec. 496, L. 1971
112	1	Rep. Ch. 368, Sec. 248, L. 1969
118	1–23	Rep. Ch. 280, Sec. 10, L. 1967
120	1	Rep. Ch. 251, Sec. 28, L. 1961
137	15(d)	Rep. Ch. 156, Sec. 9, L. 1961
140	1	Rep. Ch. 5, Sec. 496, L. 1971
147	1	Rep. Ch. 368, Sec. 248, L. 1969
148	14	81-2305
	15	81-601.1
	18	Rep. Ch. 428, Sec. 116, L. 1973
149	1	Rep. Ch. 5, Sec. 496, L. 1971
158	1	Rep. Ch. 5, Sec. 496, L. 1971
161	1	Rep. Ch. 177, Sec. 51, L. 1965
165	1	Rep. Ch. 5, Sec. 496, L. 1971
168	1	Rep. Ch. 428, Sec. 116, L. 1973

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171	1	Rep. Ch. 13, Sec. 84, L. 1961
172	1-6	Rep. Ch. 368, Sec. 248, L. 1969
176	1-26	Rep. Ch. 314, Sec. 14, L. 1969
	28	Rep. Ch. 314, Sec. 14, L. 1969
	30	Rep. Ch. 314, Sec. 14, L. 1969
181	1	Rep. Ch. 368, Sec. 248, L. 1969
184	1	Rep. Ch. 196, Sec. 2, L. 1967
185	1	Rep. Ch. 300, Sec. 143, L. 1967
186	1	Rep. Ch. 5, Sec. 496, L. 1971
187	1-5	Rep. Ch. 196, Sec. 2, L. 1967
	7	Rep. Ch. 196, Sec. 2, L. 1967
188	2	95-1809
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189	1	95-3201
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192	1	Rep. Ch. 361, Sec. 7, L. 1969
194	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
196	1-2	Rep. Ch. 199, Sec. 101, L. 1965
198	1	Rep. Ch. 300, Sec. 143, L. 1967
203	1	Rep. Ch. 368, Sec. 248, L. 1969
204	1-7	Rep. Ch. 81, Sec. 1, L. 1959

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1	1	Rep. Ch. 428, Sec. 116, L. 1973
5	1	Rep. Ch. 500, Sec. 20, L. 1973
10	1	43-711.3
14	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
20	1	Rep. Ch. 5, Sec. 496, L. 1971
23	1	Rep. Ch. 1, Sec. 4, L. 1965
28	1	Rep. Ch. 13, Sec. 84, L. 1961
34	1	Rep. Ch. 25, Sec. 1, L. 1971
35	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	2	Repealing Clause
	3	Rep. Ch. 197, Sec. 12–109, L. 1965
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	5	Effective Date
38	3	Rep. Ch. 129, Sec. 1, L. 1963
40	1	Rep. Ch. 196, Sec. 2, L. 1967
48	9	Rep. Ch. 511, Sec. 58, L. 1973
49	1–13	Rep. Ch. 256, Sec. 2, L. 1973
	15–17	Rep. Ch. 256, Sec. 2, L. 1973
	19	Rep. Ch. 256, Sec. 2, L. 1973
60	1	Rep. Ch. 300, Sec. 143, L. 1967
61	1	Rep. Ch. 13, Sec. 84, L. 1961
63	1–4	Rep. Ch. 197, Sec. 12–109, L. 1965
66	1	Rep. Ch. 68, Sec. 10, L. 1967
67	1	Rep. Ch. 369, Sec. 20, L. 1969
70	1–3	Rep. Ch. 5, Sec. 496, L. 1971
78	2–6	Rep. Ch. 5, Sec. 496, L. 1971
81	1-2	Rep. Ch. 368, Sec. 248, L. 1969
83	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
84	1	Rep. Ch. 368, Sec. 248, L. 1969
88	2-3	Rep. Ch. 361, Sec. 7, L. 1969
	7	Rep. Ch. 390, Sec. 13, L. 1973
92	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
103	1-3	Rep. Ch. 163, Sec. 1, L. 1959
106	1	Rep. Ch. 5, Sec. 496, L. 1971
117	9	Rep. Ch. 213, Sec. 9, L. 1963
119	1	Rep. Ch. 282, Sec. 2, L. 1973
127	1–8	Rep. Ch. 197, Sec. 223, L. 1967
129	11	Rep. Ch. 152, Sec. 2, L. 1973
131	1	Rep. Ch. 271, Sec. 33, L. 1963
	3-4	Rep. Ch. 271, Sec. 33, L. 1963

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131	5	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
132	5–6	Rep. Ch. 260, Sec. 12, L. 1967
144	1	Rep. Ch. 194, Sec. 13, L. 1967
146	1-2	Rep. Ch. 99, Sec. 43, L. 1969
	3	Rep. Ch. 147, Sec. 242, L. 1963
	4-10	Rep. Ch. 99, Sec. 43, L. 1969
	11	Rep. Ch. 160, Sec. 24, L. 1965
	12	Rep. Ch. 99, Sec. 43, L. 1969
	13	Rep. Ch. 160, Sec. 24, L. 1965
	14-24	Rep. Ch. 99, Sec. 43, L. 1969
	25	Rep. Ch. 160, Sec. 24, L. 1965
	26-31	Rep. Ch. 99, Sec. 43, L. 1969
151	4	Rep. Ch. 71, Sec. 3, L. 1973
	8	Rep. Ch. 71, Sec. 3, L. 1973
158	1-12	Rep. Ch. 274, Sec. 20, L. 1965
159	1	Rep. Ch. 5, Sec. 496, L. 1971
160	1-7	Rep. Ch. 250, Sec. 14, L. 1969
163	6	Rep. Ch. 240, Sec. 7, L. 1973
166	1	Rep. Ch. 5, Sec. 496, L. 1971
170	1	Rep. Ch. 194, Sec. 13, L. 1967
172	23	Rep. Ch. 264, Sec. 10-102, L. 1963
177	3	Rep. Ch. 44, Sec. 7, L. 1961
	5-8	Rep. Ch. 44, Sec. 7, L. 1961
178	1–7	Rep. Ch. 5, Sec. 496, L. 1971
180	1	Rep. Ch. 129, Sec. 1, L. 1963
183	1-5	Rep. Ch. 55, Sec. 3, L. 1965
185	1–9	Rep. Ch. 452, Sec. 46, L. 1973
186	1	Rep. Ch. 13, Sec. 84, L. 1961
195	5-8	Rep. Ch. 185, Sec. 3, L. 1969
202	1–4	Rep. Ch. 5, Sec. 496, L. 1971
204	12	Rep. Ch. 192, Sec. 14, L. 1959
	19	Rep. Ch. 192, Sec. 14, L. 1959
206	1	Rep. Ch. 5, Sec. 496, L. 1971
207	1	Rep. Ch. 5, Sec. 496, L. 1971
208	28	Rep. Ch. 147, Sec. 242, L. 1963
213	1	Rep. Ch. 197, Sec. 12–109, L. 1965
215	1–4	Rep. Ch. 5, Sec. 496, L. 1971
217	1–4	Rep. Ch. 5, Sec. 496, L. 1971
222	4	82A-1602.8
	9	Rep. Ch. 177, Sec. 51, L. 1965

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Ch.	Sec.	Herein
2	1	Rep. Ch. 320, Sec. 9, L. 1971
3	1	Rep. Ch. 264, Sec. 10-102, L. 1963
5	1	71-1001 to 71-1008
	2	Repealing Clause
	3	Effective Date
7	1–3	Rep. Ch. 181, Sec. 7, L. 1971
14	10	Rep. Ch. 100, Sec. 58, L. 1973
19	1	S. M.R.App.Civ.P., Rules 9, 10, 25
27	1	Rep. Ch. 99, Sec. 43, L. 1969
31	1	Rep. Ch. 5, Sec. 496, L. 1971
32	1	Rep. Ch. 368, Sec. 248, L. 1969
34	1, 2	Rep. Ch. 147, Sec. 4, L. 1971
36	1	Rep. Ch. 264, Sec. 10-102, L. 1963
37	1–4	Rep. Ch. 194, Sec. 13, L. 1967
41	1	S. M.R.App.Civ.P., Rule 1
44	1	Rep. Ch. 368, Sec. 248, L. 1969
49	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 252, Sec. 2, L. 1967
51	1	Rep. Ch. 368, Sec. 248, L. 1969

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53	1	Rep. Ch. 300, Sec. 143, L. 1967
56	1–9	Temporary
63	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
64	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
65	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
66	1–4	Rep. Ch. 197, Sec. 223, L. 1967
67	1-9	Rep. Ch. 41, Sec. 24, L. 1963
	11-12	Rep. Ch. 41, Sec. 24, L. 1963
68	1	Rep. Ch. 205, Sec. 2, L. 1971
70	1–15	Rep. Ch. 197, Sec. 223, L. 1967
72	1	Rep. Ch. 300, Sec. 143, L. 1967
81	1	Rep. Ch. 177, Sec. 51, L. 1965
85	1	Rep. Ch. 368, Sec. 248, L. 1969
93	1–6	Rep. Ch. 320, Sec. 9, L. 1971
	9	Rep. Ch. 320, Sec. 9, L. 1971
97	1	Rep. Ch. 199, Sec. 101, L. 1965
98	1	Rep. Ch. 413, Sec. 51, L. 1971
101	1	Rep. Ch. 5, Sec. 496, L. 1971
102	1	Rep. Ch. 264, Sec. 10-102, L. 1963
103	1	Rep. Ch. 221, Sec. 16, L. 1971
110	1	Rep. Ch. 13, Sec. 84, L. 1961
111	1	Rep. Ch. 197, Sec. 12–109, L. 1965
115	1	Rep. Ch. 199, Sec. 1, L. 1961
117	1	Rep. Ch. 152, Sec. 2, L. 1973
125	1	Rep. Ch. 196, Sec. 2, L. 1967
135	1	Rep. Ch. 282, Sec. 2, L. 1973
138	2–10	Rep. Ch. 5, Sec. 496, L. 1971
144	1	Rep. Ch. 368, Sec. 248, L. 1969
146	1-3	Rep. Ch. 314, Sec. 14, L. 1969
152	1–14	Rep. Ch. 5, Sec. 496, L. 1971
164	9(d)	Rep. Ch. 156, Sec. 9, L. 1961
166	1, 2	Rep. Ch. 511, Sec. 58, L. 1973

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Ch.	Sec.	Herein
1	1-2	Rep. Ch. 1, Sec. 4, L. 1965
3	1-2	Rep. Ch. 1, Sec. 4, L. 1965
9	1	Rep. Ch. 67, Sec. 11, L. 1967
10	3	Rep. Ch. 213, Sec. 9, L. 1963
11	1	Rep. Ch. 199, Sec. 101, L. 1965
12	1	Rep. Ch. 2, Sec. 63, L. 1971
14	1	Rep. Ch. 405, Sec. 120, L. 1973
17	1-2	Rep. Ch. 13, Sec. 84, L. 1961
19	1-4	Rep. Ch. 368, Sec. 248, L. 1969
20	1	Rep. Ch. 500, Sec. 20, L. 1973
24	1-2	Rep. Ch. 32, Sec. 1, L. 1953
	4-5	Rep. Ch. 32, Sec. 1, L. 1953
30	1, 2	Rep. Ch. 272, Sec. 3, L. 1971
31	1	Rep. Ch. 280, Sec. 10, L. 1967
32	2	Rep. Ch. 199, Sec. 101, L. 1965
40	1-2	Rep. Ch. 368, Sec. 248, L. 1969
41	1	23-4736
44	1–36	Rep. Ch. 197, Sec. 223, L. 1967
	38–39	Rep. Ch. 197, Sec. 223, L. 1967
45	1	Rep. Ch. 32, Sec. 1, L. 1953
61	1	Rep. Ch. 5, Sec. 496, L. 1971
63	1	Rep. Ch. 369, Sec. 20, L. 1969
65	1	Rep. Ch. 368, Sec. 248, L. 1969
66	1	Rep. Ch. 5, Sec. 496, L. 1971
68	1, 2	Rep. Ch. 2, Sec. 63, L. 1971

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69	1	Rep. Ch. 199, Sec. 101, L. 1965
70	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963
72	1	Rep. Ch. 123, Sec. 23, L. 1973
76	1	Rep. Ch. 199, Sec. 101, L. 1965
	3	Rep. Ch. 213, Sec. 9, L. 1963
77	1	Rep. Ch. 420, Sec. 4, L. 1971
	3	Rep. Ch. 420, Sec. 4, L. 1971
84	1	Rep. Ch. 300, Sec. 143, L. 1967
85	1	Rep. Ch. 5, Sec. 496, L. 1971
99	1-6	Rep. Ch. 368, Sec. 248, L. 1969
102	1–7	Rep. Ch. 197, Sec. 223, L. 1967
103	1	Rep. Ch. 5, Sec. 496, L. 1971
104	1	Rep. Ch. 368, Sec. 248, L. 1969
105	1	Rep. Ch. 368, Sec. 248, L. 1969
107	1	Rep. Ch. 199, Sec. 101, L. 1965
110	1	Rep. Ch. 199, Sec. 101, L. 1965
111	1	Rep. Ch. 305, Sec. 2, L. 1967
114	1–2	Rep. Ch. 197, Sec. 223, L. 1967
	3	Rep. Ch. 366, Sec. 27, L. 1969
115	1-23	Rep. Ch. 264, Sec. 10-102, L. 1963
	26	Rep. Ch. 264, Sec. 10-102, L. 1963
116	1	Rep. Ch. 199, Sec. 1, L. 1961
120	2	Rep. Ch. 147, Sec. 242, L. 1963
123	1	Rep. Ch. 256, Sec. 2, L. 1973
125	1–4	Rep. Ch. 197, Sec. 223, L. 1967
126	1	Rep. Ch. 107, Sec. 18, L. 1965
132	1-5	Rep. Ch. 338, Sec. 43, L. 1969
133	2	Rep. Ch. 148, Sec. 2, L. 1971
138	2, 3	Rep. Ch. 428, Sec. 116, L. 1973
140	1	Rep. Ch. 13, Sec. 84, L. 1961
141	1	Rep. Ch. 300, Sec. 143, L. 1967
142	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
151	1	Rep. Ch. 41, Sec. 24, L. 1963
156	1	Rep. Ch. 266, Sec. 82, L. 1963
	2-6	Rep. Ch. 199, Sec. 101, L. 1965
157	6	Rep. Ch. 102, Sec. 3, L. 1969
	9	Rep. Ch. 213, Sec. 9, L. 1963
165	3	Rep. Ch. 266, Sec. 82, L. 1963
168	1	Rep. Ch. 5, Sec. 496, L. 1971
171	1	Rep. Ch. 38, Sec. 2, L. 1963
175	1	Rep. Ch. 197, Sec. 12–109, L. 1965
177	1	Rep. Ch. 368, Sec. 248, L. 1969
180	1	Rep. Ch. 13, Sec. 84, L. 1961
182	13	Rep. Ch. 147, Sec. 242, L. 1963
183	1	Rep. Ch. 266, Sec. 82, L. 1963
	2	Rep. Ch. 199, Sec. 101, L. 1965
	3	Rep. Ch. 266, Sec. 82, L. 1963
	4-7	Rep. Ch. 199, Sec. 101, L. 1965
	8-9	Rep. Ch. 213, Sec. 9, L. 1963
	10-11	Rep. Ch. 199, Sec. 101, L. 1965
	12	Rep. Ch. 213, Sec. 9, L. 1963
	13-16	Rep. Ch. 199, Sec. 101, L. 1965
	17-18	Rep. Ch. 266, Sec. 82, L. 1963
184	10-11	Rep. Ch. 147, Sec. 242, L. 1963
	13	Rep. Ch. 147, Sec. 242, L. 1963
186	7	Rep. Ch. 5, Sec. 496, L. 1971
189	1–3	Rep. Ch. 5, Sec. 496, L. 1971
190	1-3	Rep. Ch. 368, Sec. 248, L. 1969
192	1	Rep. Ch. 5, Sec. 496, L. 1971
193	1	Rep. Ch. 5, Sec. 496, L. 1971
199	11	Rep. Ch. 102, Sec. 1, L. 1959
201	1	Rep. Ch. 5, Sec. 496, L. 1971

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202	1–3	Rep. Ch. 260, Sec. 12, L. 1967
203	1	Rep. Ch. 5, Sec. 496, L. 1971
205	1	Rep. Ch. 5, Sec. 496, L. 1971
208	1–5	Rep. Ch. 5, Sec. 496, L. 1971
209	1-2	Rep. Ch. 266, Sec. 82, L. 1963
210	1	Rep. Ch. 1, Sec. 4, L. 1965
219	1	Rep. Ch. 5, Sec. 496, L. 1971
225	1–2	Rep. Ch. 197, Sec. 223, L. 1967
226	1	Rep. Ch. 38, Sec. 2, L. 1963
227	4	Rep. Ch. 262, Sec. 16, L. 1969
	8	Rep. Ch. 262, Sec. 16, L. 1969
	17-19	Rep. Ch. 262, Sec. 16, L. 1969
	33	Rep. Ch. 262, Sec. 16, L. 1969
228	1-10	Rep. Ch. 127, Sec. 15, L. 1963
229	1	Rep. Ch. 252, Sec. 2, L. 1973
230	1	Rep. Ch. 493, Sec. 2, L. 1973
233	4	Rep. Ch. 156, Sec. 9, L. 1961
234	1-17	Rep. Ch. 368, Sec. 248, L. 1969

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Ch.	Sec.	Herein
2	1-4	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
10	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
11	1	Rep. Ch. 199, Sec. 101, L. 1965
15	1	Rep. Ch. 5, Sec. 496, L. 1971
23	1-3	Rep. Ch. 368, Sec. 248, L. 1969
26	1	Rep. Ch. 368, Sec. 248, L. 1969
27	1	Rep. Ch. 368, Sec. 248, L. 1969
28	1-4	Rep. Ch. 368, Sec. 248, L. 1969
29	1	Rep. Ch. 196, Sec. 2, L. 1967
34	1	Rep. Ch. 368, Sec. 248, L. 1969
38	14	Rep. Ch. 188, Sec. 4, L. 1959
41	1	Rep. Ch. 262, Sec. 16, L. 1969
42	1	Rep. Ch. 199, Sec. 101, L. 1965
45	1	Rep. Ch. 5, Sec. 496, L. 1971
47	1	Rep. Ch. 5, Sec. 496, L. 1971
49	1	Rep. Ch. 368, Sec. 248, L. 1969
50	1	Rep. Ch. 5, Sec. 496, L. 1971
57	1	Rep. Ch. 266, Sec. 82, L. 1963
69	1–4	Rep. Ch. 197, Sec. 12–109, L. 1965
72	1	Rep. Ch. 199, Sec. 101, L. 1965
74	1	Rep. Ch. 42, Sec. 2, L. 1961
78	1-6	Rep. Ch. 271, Sec. 33, L. 1963
81	1	Rep. Ch. 199, Sec. 101, L. 1965
86	1–7	Rep. Ch. 197, Sec. 12–109, L. 1965
87	1	Rep. Ch. 197, Sec. 12–109, L. 1965
88	1, 2	Rep. Ch. 443, Sec. 6, L. 1973
91	3-4	Rep. Ch. 215, Sec. 3, L. 1965
92	1	Rep. Ch. 13, Sec. 84, L. 1961
96	1	Rep. Ch. 199, Sec. 101, L. 1965
101	1	Rep. Ch. 205, Sec. 2, L. 1971
102	1	Rep. Ch. 38, Sec. 2, L. 1963
104	1	Rep. Ch. 368, Sec. 248, L. 1969
106	1–3	Rep. Ch. 428, Sec. 116, L. 1973
109	1	Rep. Ch. 99, Sec. 43, L. 1969
110	1-5	Rep. Ch. 99, Sec. 43, L. 1969
111	3	Rep. Ch. 80, Sec. 14, L. 1961
	4	Rep. Ch. 177, Sec. 51, L. 1965
113	1	Unconstitutional, 246 F Supp 396
116	1	Rep. Ch. 5, Sec. 496, L. 1971
119	1-5	Rep. Ch. 107, Sec. 18, L. 1965

Ch.	Sec.	Herein
125	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
127	1–2	Rep. Ch. 197, Sec. 223, L. 1967
130	1	Rep. Ch. 5, Sec. 496, L. 1971
131	1–5	Rep. Ch. 5, Sec. 496, L. 1971
132	1	Rep. Ch. 5, Sec. 496, L. 1971
133	1-4	Rep. Ch. 267, Sec. 16, L. 1963
134	1–5	Rep. Ch. 5, Sec. 496, L. 1971
135	1–5	Rep. Ch. 5, Sec. 496, L. 1971
137	1–3	Rep. Ch. 5, Sec. 496, L. 1971
141	1–5	Rep. Ch. 138, Sec. 1, L. 1973
	7	Rep. Ch. 138, Sec. 1, L. 1973
	9–12	Rep. Ch. 138, Sec. 1, L. 1973
147	1-19	Rep. Ch. 264, Sec. 10-102, L. 1963
148	1-8	Rep. Ch. 55, Sec. 1, L. 1959
150	5	Rep. Ch. 306, Sec. 2, L. 1973
155	1	Rep. Ch. 197, Sec. 12–109, L. 1965
158	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
	3–6	Rep. Ch. 2, Sec. 63, L. 1971
162	5, 6	Rep. Ch. 369, Sec. 20, L. 1969
166	1–10	Rep. Ch. 2, Sec. 63, L. 1971
167	1-3	Rep. Ch. 368, Sec. 248, L. 1969
170	1	Rep. Ch. 197, Sec. 223, L. 1967
	3	Rep. Ch. 197, Sec. 223, L. 1967
171	1–14	Rep. Ch. 197, Sec. 223, L. 1967
174	1–2	Omitted
180	1	Rep. Ch. 500, Sec. 20, L. 1973
181	1	Rep. Ch. 199, Sec. 1, L. 1961
195	1	Rep. Ch. 256, Sec. 6, L. 1971
197	1	Rep. Ch. 184, Sec. 8, L. 1961
198	1	Rep. Ch. 266, Sec. 82, L. 1963
	3-6	Rep. Ch. 266, Sec. 82, L. 1963
198	8	Rep. Ch. 266, Sec. 82, L. 1963
202	1–3	Rep. Ch. 197, Sec. 223, L. 1967
203	1–4	Rep. Ch. 197, Sec. 223, L. 1967
204	1	Rep. Ch. 271, Sec. 33, L. 1963
	3-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	10-11	Rep. Ch. 271, Sec. 33, L. 1963
205	1, 2	Rep. Ch. 428, Sec. 116, L. 1973
212	1–33	Rep. Ch. 323, Sec. 63, L. 1973
	35–41	Rep. Ch. 323, Sec. 63, L. 1973
213	1	Unconstitutional, 130 M 402, 303 P 2d 938
	2	Rep. Ch. 252, Sec. 2, L. 1973
	3–6	Unconstitutional, 130 M 402, 303 P 2d 938

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Ch.	Sec.	Herein
5	1	Rep. Ch. 300, Sec. 143, L. 1967
10	1	Rep. Ch. 300, Sec. 143, L. 1967
15	1	Rep. Ch. 189, Sec. 2, L. 1963
16	1	Rep. Ch. 13, Sec. 84, L. 1961
21	1	Rep. Ch. 197, Sec. 223, L. 1967
22	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
26	1	Rep. Ch. 368, Sec. 248, L. 1969
27	1	Rep. Ch. 5, Sec. 496, L. 1971
28	1	Rep. Ch. 5, Sec. 496, L. 1971
30	1	Rep. Ch. 68, Sec. 10, L. 1967
31	1-11	Rep. Ch. 300, Sec. 143, L. 1967
32	1	Rep. Ch. 300, Sec. 143, L. 1967
33	1	Rep. Ch. 300, Sec. 143, L. 1967
34	1	Rep. Ch. 300, Sec. 143, L. 1967

Ch.	Sec.	Herein
39	1	Rep. Ch. 300, Sec. 143, L. 1967
40	1, 2	Rep. Ch. 323, Sec. 63, L. 1973
51	1	Rep. Ch. 199, Sec. 1, L. 1961
53	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963
56	1	16–1008, 16–1008A
59	1-10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
61	1	Rep. Ch. 260, Sec. 12, L. 1967
62	1	Rep. Ch. 199, Sec. 101, L. 1965
68	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
72	1-2	Rep. Ch. 55, Sec. 3, L. 1965
75	Preamble, 1-2	Rep. Ch. 47, Sec. 14, L. 1963
76	1-2	Rep. Ch. 266, Sec. 82, L. 1963
80	1–4	Rep. Ch. 23, Sec. 2, L. 1973
86	1	Rep. Ch. 511, Sec. 58, L. 1973
88	5	Rep. Ch. 511, Sec. 58, L. 1973
90	1	Rep. Ch. 5, Sec. 496, L. 1971
102	1	Rep. Ch. 197, Sec. 12–109, L. 1965
103	1-3	Rep. Ch. 199, Sec. 101, L. 1965
106	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
108	1	Rep. Ch. 136, Sec. 6, L. 1971
115	1	Rep. Ch. 2, Sec. 63, L. 1971
117	1	Rep. Ch. 368, Sec. 248, L. 1969
118	1	Rep. Ch. 272, Sec. 2, L. 1959
130	1	Rep. Ch. 369, Sec. 20, L. 1969
135	1	Rep. Ch. 5, Sec. 496, L. 1971
137	1	Rep. Ch. 198, Sec. 98, L. 1967
139	1	Rep. Ch. 305, Sec. 2, L. 1967
141	1	Rep. Ch. 368, Sec. 248, L. 1969
144	1	Rep. Ch. 197, Sec. 12–109, L. 1965
145	1	Rep. Ch. 197, Sec. 12–109, L. 1965
149	1	Rep. Ch. 197, Sec. 12–109, L. 1965
157	1	Rep. Ch. 147, Sec. 242, L. 1963
161	1–3	Rep. Ch. 5, Sec. 496, L. 1971
163	1	Rep. Ch. 99, Sec. 43, L. 1969
168	1	Rep. Ch. 174, Sec. 16, L. 1961
169	1	Rep. Ch. 5, Sec. 496, L. 1971
173	1	Rep. Ch. 68, Sec. 10, L. 1967
175	1	Rep. Ch. 251, Sec. 28, L. 1961
182	1	Rep. Ch. 38, Sec. 2, L. 1963
183	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
186	1	Rep. Ch. 323, Sec. 63, L. 1973
188	1	Rep. Ch. 5, Sec. 496, L. 1971
189	1	Rep. Ch. 197, Sec. 223, L. 1967
190	1–3	Rep. Ch. 2, Sec. 63, L. 1971
191	1	Rep. Ch. 197, Sec. 223, L. 1967
192	1-6	Rep. Ch. 162, Sec. 17, L. 1965
194	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
195	1, 2	Rep. Ch. 2, Sec. 63, L. 1971
196	1–6	Rep. Ch. 428, Sec. 116, L. 1973
200	1	Rep. Ch. 500, Sec. 20, L. 1973
203	1	Rep. Ch. 199, Sec. 101, L. 1965
214	1	Rep. Ch. 199, Sec. 101, L. 1965
217	1	Rep. Ch. 218, Sec. 4, L. 1957
218	1-10	Rep. Ch. 237, Sec. 28, L. 1961
220	1-13	Rep. Ch. 17, Sec. 16, L. 1967
	14	Rep. Ch. 149, Sec. 4, L. 1959
	15-16	Rep. Ch. 17, Sec. 16, L. 1967
221	1	Rep. Ch. 256, Sec. 5, L. 1965
222	1–3	Rep. Ch. 2, Sec. 63, L. 1971
224	15	Rep. Ch. 56, Sec. 1, L. 1969

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224	25	Rep. Ch. 221, Sec. 16, L. 1971
227	1	Rep. Ch. 500, Sec. 20, L. 1973
228	1	Rep. Ch. 185, Sec. 3, L. 1969
230	1	Rep. Ch. 471, Sec. 2, L. 1973
	2	Rep. Ch. 202, Sec. 2, L. 1973
	3	Rep. Ch. 155, Sec. 2, L. 1973
	4	Rep. Ch. 203, Sec. 2, L. 1973
232	1	Rep. Ch. 5, Sec. 496, L. 1971
235	1	Rep. Ch. 177, Sec. 51, L. 1965
	2	Rep. Ch. 493, Sec. 2, L. 1973
	3	Rep. Ch. 282, Sec. 2, L. 1973
	8	Rep. Ch. 197, Sec. 1, L. 1959
238	1–2	16–1008A
240	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
243	1	Rep. Ch. 42, Sec. 1, L. 1973
257	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 366, Sec. 27, L. 1969
258	1-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
263	1–12	Rep. Ch. 403, Sec. 35, L. 1971
264	1	Rep. Ch. 42, Sec. 2, L. 1961
268	1	Rep. Ch. 199, Sec. 101, L. 1965
269	1–19	Rep. Ch. 197, Sec. 223, L. 1967
270	1–4	Rep. Ch. 197, Sec. 223, L. 1967
	7	Rep. Ch. 77, Sec. 14, L. 1965
	8–18	Rep. Ch. 197, Sec. 223, L. 1967
273	1	Rep. Ch. 5, Sec. 496, L. 1971
275	1–6	Rep. Ch. 5, Sec. 496, L. 1971
276	3	Rep. Ch. 262, Sec. 16, L. 1969
	8	Rep. Ch. 262, Sec. 16, L. 1969
280	1	Rep. Ch. 5, Sec. 496, L. 1971
282	1–8	Rep. Ch. 5, Sec. 496, L. 1971
283	1-3	Rep. Ch. 198, Sec. 98, L. 1967
289	1-5	Rep. Ch. 140, Sec. 32, L. 1969
	7-23	Rep. Ch. 140, Sec. 32, L. 1969
291	1-5	Rep. Ch. 232, Sec. 9, L. 1961
295	1-7	Rep. Ch. 300, Sec. 143, L. 1967
297	1–9	Rep. Ch. 323, Sec. 63, L. 1973

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7	1	Rep. Ch. 471, Sec. 2, L. 1973
	2	Rep. Ch. 202, Sec. 2, L. 1973
	3	Rep. Ch. 155, Sec. 2, L. 1973
12	1	Rep. Ch. 314, Sec. 14, L. 1969
14	1	Rep. Ch. 260, Sec. 12, L. 1967
20	1	Rep. Ch. 272, Sec. 2, L. 1959
28	1–6	Rep. Ch. 5, Sec. 496, L. 1971
30	1	Rep. Ch. 3, Sec. 3, L. 1965; Ch. 2, Sec. 63, L. 1971
38	1	Rep. Ch. 196, Sec. 2, L. 1967
41	1	Rep. Ch. 252, Sec. 2, L. 1973
55	1	Rep. Ch. 368, Sec. 248, L. 1969
57	1–6	Rep. Ch. 197, Sec. 223, L. 1967
61	1	Rep. Ch. 5, Sec. 496, L. 1971
66	1	Rep. Ch. 189, Sec. 2, L. 1963
75	1	Rep. Ch. 368, Sec. 248, L. 1969
79	1	Rep. Ch. 368, Sec. 248, L. 1969
82	1	Rep. Ch. 266, Sec. 82, L. 1963
83	1–2	Rep. Ch. 147, Sec. 4, L. 1971
84	1	Rep. Ch. 13, Sec. 84, L. 1961

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84	2–3	Rep. Ch. 199, Sec. 101, L. 1965
89	1–3	Rep. Ch. 5, Sec. 496, L. 1971
92	1	Rep. Ch. 368, Sec. 248, L. 1969
103	1	Rep. Ch. 420, Sec. 4, L. 1971
105	1	Rep. Ch. 197, Sec. 223, L. 1967
111	1	Rep. Ch. 300, Sec. 143, L. 1967
113	1	Rep. Ch. 154, Sec. 1, L. 1959
115	1	Rep. Ch. 405, Sec. 120, L. 1973
116	1	Rep. Ch. 199, Sec. 101, L. 1965
117	1	95-1810
127	1	Rep. Ch. 280, Sec. 10, L. 1967
128	1	Rep. Ch. 129, Sec. 1, L. 1963
130	1	Rep. Ch. 5, Sec. 496, L. 1971
	3–5	Rep. Ch. 5, Sec. 496, L. 1971
134	1-15	Rep. Ch. 47, Sec. 14, L. 1963
135	1	S. M.R.Civ.P., Rule 4 D
136	3	Rep. Ch. 147, Sec. 242, L. 1963
138	1–3	Rep. Ch. 286, Sec. 1, L. 1973
	5	Rep. Ch. 286, Sec. 1, L. 1973
	7–20	Rep. Ch. 286, Sec. 1, L. 1973
140	1	Rep. Ch. 42, Sec. 1, L. 1973
142	1–6	Rep. Ch. 5, Sec. 496, L. 1971
	7	Rep. Ch. 187, Sec. 2, L. 1959; Ch. 5, Sec. 496, L. 1971
	8–10	Rep. Ch. 5, Sec. 496, L. 1971
146	1	Rep. Ch. 5, Sec. 496, L. 1971
149	1	Rep. Ch. 264, Sec. 10-102, L. 1963
152	1, 2	Rep. Ch. 511, Sec. 58, L. 1973
153	7	Rep. Ch. 147, Sec. 242, L. 1963
	12	Rep. Ch. 128, Sec. 2, L. 1973
156	1	Rep. Ch. 511, Sec. 58, L. 1973
160	1	Rep. Ch. 368, Sec. 248, L. 1969
163	1	Rep. Ch. 5, Sec. 496, L. 1971
166	1	Rep. Ch. 5, Sec. 496, L. 1971
168	1	Rep. Ch. 369, Sec. 20, L. 1969
170	1–4	Temporary
171	1	Rep. Ch. 198, Sec. 98, L. 1967
172	1–3	Rep. Ch. 197, Sec. 223, L. 1967
173	1, 2	Rep. Ch. 221, Sec. 16, L. 1971
	5	Rep. Ch. 511, Sec. 58, L. 1973
174	1	Rep. Ch. 99, Sec. 43, L. 1969
176	1	Rep. Ch. 428, Sec. 116, L. 1973
	2	Rep. Ch. 272, Sec. 3, L. 1971
177	1	Rep. Ch. 306, Sec. 2, L. 1973
180	1	Rep. Ch. 199, Sec. 1, L. 1961
181	1	Rep. Ch. 199, Sec. 1, L. 1961
182	1	Rep. Ch. 202, Sec. 3, L. 1959
185	20	Rep. Ch. 188, Sec. 4, L. 1959
190	1	Rep. Ch. 257, Sec. 10, L. 1965
	4	Rep. Ch. 257, Sec. 10, L. 1965
191	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 184, Sec. 8, L. 1961
198	1	Rep. Ch. 369, Sec. 20, L. 1969
199	1–3	Rep. Ch. 5, Sec. 496, L. 1971
	4	Temporary
	5–22	Rep. Ch. 5, Sec. 496, L. 1971
200	1–3	Rep. Ch. 5, Sec. 496, L. 1971
202	1	Rep. Ch. 369, Sec. 20, L. 1969
205	1	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	2-3	Appropriation
206	6	Rep. Ch. 199, Sec. 101, L. 1965
	7-10	Rep. Ch. 230, Sec. 1, L. 1959

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206	11	Rep. Ch. 199, Sec. 101, L. 1965
	12	Rep. Ch. 230, Sec. 1, L. 1959
	13-17	Rep. Ch. 199, Sec. 101, L. 1965

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5	1	Rep. Ch. 300, Sec. 143, L. 1967
12	1	Rep. Ch. 368, Sec. 248, L. 1969
14	1	Rep. Ch. 368, Sec. 248, L. 1969
19	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963
25	1	Rep. Ch. 197, Sec. 12–109, L. 1965
32	1	Rep. Ch. 5, Sec. 496, L. 1971
42	1	Rep. Ch. 127, Sec. 15, L. 1963
48	1	Rep. Ch. 471, Sec. 2, L. 1973
	2	Rep. Ch. 202, Sec. 2, L. 1973
	3	Rep. Ch. 155, Sec. 2, L. 1973
52	1	Rep. Ch. 369, Sec. 20, L. 1969
59	1	Rep. Ch. 185, Sec. 3, L. 1969
60	1	Rep. Ch. 185, Sec. 3, L. 1969
62	1	Rep. Ch. 280, Sec. 22, L. 1965
63	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
64	1	Rep. Ch. 368, Sec. 248, L. 1969
65	1	Rep. Ch. 5, Sec. 496, L. 1971
73	1	Rep. Ch. 199, Sec. 101, L. 1965
74	1	23-4774
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76	1–4	Rep. Ch. 5, Sec. 496, L. 1971
81	3	Rep. Ch. 511, Sec. 58, L. 1973
82	1	Rep. Ch. 2, Sec. 63, L. 1971
91	1	Rep. Ch. 5, Sec. 496, L. 1971
92	1	Rep. Ch. 5, Sec. 496, L. 1971
106	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
107	1	Rep. Ch. 5, Sec. 496, L. 1971
108	1	Rep. Ch. 2, Sec. 63, L. 1971
109	1	Rep. Ch. 5, Sec. 496, L. 1971
114	1	Rep. Ch. 5, Sec. 496, L. 1971
122	1	S. M.R.Civ.P., Rule 4 D
	2	Rep. Ch. 189, Sec. 2, L. 1963
125	2, 3	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
127	1-3	Rep. Ch. 127, Sec. 15, L. 1963
129	1	Rep. Ch. 55, Sec. 3, L. 1965
130	1	Rep. Ch. 160, Sec. 24, L. 1965
131	1	Rep. Ch. 420, Sec. 4, L. 1971
138	1	Rep. Ch. 280, Sec. 10, L. 1967
143	1-6	Rep. Ch. 99, Sec. 43, L. 1969
148	2	Rep. Ch. 147, Sec. 242, L. 1963
154	1–7	Rep. Ch. 197, Sec. 223, L. 1967
155	1-2	Rep. Ch. 361, Sec. 7, L. 1969
156	1	Rep. Ch. 152, Sec. 2, L. 1973
158	1–3	Rep. Ch. 442, Sec. 9, L. 1973
163	1	Rep. Ch. 5, Sec. 496, L. 1971
164	1	Rep. Ch. 428, Sec. 116, L. 1973
168	1-5	Rep. Ch. 232, Sec. 9, L. 1961
175	1-8	Rep. Ch. 300, Sec. 143, L. 1967
176	1	Rep. Ch. 300, Sec. 143, L. 1967
177	6	Rep. Ch. 100, Sec. 58, L. 1973
	9, 10	Rep. Ch. 93, Sec. 44, L. 1969
	12	Rep. Ch. 100, Sec. 58, L. 1973
180	1	Rep. Ch. 5, Sec. 496, L. 1971

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182	1	Rep. Ch. 5, Sec. 496, L. 1971
	3–5	Rep. Ch. 5, Sec. 496, L. 1971
183	1	Rep. Ch. 42, Sec. 1, L. 1973
184	1, 2	Rep. Ch. 221, Sec. 16, L. 1971
	4	Rep. Ch. 511, Sec. 58, L. 1973
186	2–7	Rep. Ch. 323, Sec. 63, L. 1973
188	1–3	Rep. Ch. 5, Sec. 496, L. 1971
189	2–8	Rep. Ch. 5, Sec. 496, L. 1971
190	1	Rep. Ch. 254, Sec. 2, L. 1973
191	1–2	Rep. Ch. 194, Sec. 13, L. 1967
193	1-6	Rep. Ch. 341, Sec. 30, L. 1969
	8	Rep. Ch. 341, Sec. 30, L. 1969
194	5	Rep. Ch. 81, Sec. 3, L. 1961
	7-10	Rep. Ch. 158, Sec. 2, L. 1959
201	1–17	Unconstitutional, 127 M 504, 267 P 2d 724
203	4	Rep. Ch. 93, Sec. 44, L. 1969
206	1	Rep. Ch. 199, Sec. 1, L. 1961
207	1–4	Rep. Ch. 5, Sec. 496, L. 1971
208	1–4	Rep. Ch. 5, Sec. 496, L. 1971
210	1	Rep. Ch. 5, Sec. 496, L. 1971
219	1–5	Rep. Ch. 197, Sec. 12–109, L. 1965
	7–9	Rep. Ch. 197, Sec. 12–109, L. 1965
	11	Rep. Ch. 206, Sec. 27, L. 1963
	14–15	Rep. Ch. 197, Sec. 12–109, L. 1965
220	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
222	1-18	Rep. Ch. 208, Sec. 3, L. 1961
224	1	Rep. Ch. 323, Sec. 63, L. 1973
227	1-3	Rep. Ch. 147, Sec. 242, L. 1963

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Initiative No. 54	1-2	Rep. Ch. 270, Sec. 10, L. 1963
	12	Rep. Ch. 270, Sec. 10, L. 1963
	16	Rep. Ch. 140, Sec. 32, L. 1969

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6	1-2	Rep. Ch. 368, Sec. 248, L. 1969
7	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
8	1	Rep. Ch. 156, Sec. 11, L. 1965
9	1	Rep. Ch. 13, Sec. 84, L. 1961
11	1	Rep. Ch. 199, Sec. 1, L. 1961
16	1	Rep. Ch. 13, Sec. 84, L. 1961
18	1	Rep. Ch. 147, Sec. 4, L. 1971
21	1	Rep. Ch. 5, Sec. 496, L. 1971
22	1	Rep. Ch. 5, Sec. 496, L. 1971
23	1	Rep. Ch. 5, Sec. 496, L. 1971
31	1–15	Rep. Ch. 197, Sec. 12–109, L. 1965
33	1	Rep. Ch. 102, Sec. 3, L. 1969
35	1	Rep. Ch. 199, Sec. 101, L. 1965
37	1	Rep. Ch. 102, Sec. 3, L. 1973
	4	Rep. Ch. 102, Sec. 3, L. 1973
	6–14	Rep. Ch. 102, Sec. 3, L. 1973
38	1	Rep. Ch. 471, Sec. 2, L. 1973
	2	Rep. Ch. 202, Sec. 2, L. 1973
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	7	Rep. Ch. 252, Sec. 2, L. 1973
41	2	Rep. Ch. 290, Sec. 6, L. 1967
46	1	Rep. Ch. 300, Sec. 143, L. 1967

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48	1	Rep. Ch. 256, Sec. 6, L. 1971
49	1	Rep. Ch. 256, Sec. 6, L. 1971
50	1	Rep. Ch. 256, Sec. 6, L. 1971
51	1	Rep. Ch. 491, Sec. 27, L. 1973
52	1	Rep. Ch. 280, Sec. 22, L. 1965
53	1	Rep. Ch. 280, Sec. 22, L. 1965
55	1	Rep. Ch. 156, Sec. 11, L. 1965
60	1	Rep. Ch. 368, Sec. 248, L. 1969
61	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
65	1	Rep. Ch. 196, Sec. 2, L. 1967
70	1–3	Rep. Ch. 298, Sec. 9, L. 1973
72	1-3	Rep. Ch. 368, Sec. 248, L. 1969
77	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
78	1	Rep. Ch. 78, Sec. 9, L. 1965
82	1	Rep. Ch. 500, Sec. 20, L. 1973
83	1	Rep. Ch. 368, Sec. 248, L. 1969
84	1	Rep. Ch. 197, Sec. 12–109, L. 1965
86	1-3	Rep. Ch. 199, Sec. 101, L. 1965
89	1	Rep. Ch. 99, Sec. 43, L. 1969
99	1	Rep. Ch. 286, Sec. 1, L. 1973
	3, 4	Rep. Ch. 286, Sec. 1, L. 1973
	5, 6	Rep. Ch. 413, Sec. 51, L. 1971
	7	Rep. Ch. 286, Sec. 1, L. 1973
103	1	Rep. Ch. 189, Sec. 2, L. 1963
104	1-2	Rep. Ch. 368, Sec. 248, L. 1969
113	1	Rep. Ch. 2, Sec. 63 and Ch. 5, Sec. 496, L. 1971
	3–7	Rep. Ch. 5, Sec. 496, L. 1971
117	1	Rep. Ch. 197, Sec. 12–109, L. 1965
118	1	Rep. Ch. 197, Sec. 12–109, L. 1965
119	1	Rep. Ch. 428, Sec. 116, L. 1973
120	1	Rep. Ch. 5, Sec. 496, L. 1971
123	1	Rep. Ch. 140, Sec. 32, L. 1969
127	1	Rep. Ch. 511, Sec. 58, L. 1973
132	1–4	Rep. Ch. 323, Sec. 63, L. 1973
133	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
	5–9	Rep. Ch. 197, Sec. 12–109, L. 1965
134	1	Rep. Ch. 413, Sec. 51, L. 1971
138	1	Rep. Ch. 97, Sec. 32, L. 1961
139	1	Rep. Ch. 197, Sec. 12–109, L. 1965
142	1	Rep. Ch. 189, Sec. 2, L. 1959
146	1	Rep. Ch. 428, Sec. 116, L. 1973
150	1	Rep. Ch. 250, Sec. 24, L. 1963
151	1	Rep. Ch. 189, Sec. 2, L. 1963
153	1	Rep. Ch. 56, Sec. 1, L. 1969
157	1	Rep. Ch. 5, Sec. 496, L. 1971
158	2	Rep. Ch. 99, Sec. 43, L. 1969
162	1-18	Rep. Ch. 199, Sec. 101, L. 1965
165	1	Rep. Ch. 147, Sec. 242, L. 1963
166	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
172	1–12	Rep. Ch. 413, Sec. 51, L. 1971
173	1	Rep. Ch. 274, Sec. 20, L. 1965
174	1-2	Rep. Ch. 314, Sec. 14, L. 1969
176	2	Rep. Ch. 323, Sec. 63, L. 1973
	3	Rep. Ch. 5, Sec. 496, L. 1971
	4, 5	Rep. Ch. 205, Sec. 2, L. 1971
	10–16	Rep. Ch. 298, Sec. 9, L. 1973
181	1	Rep. Ch. 197, Sec. 223, L. 1967
186	1-2	Rep. Ch. 213, Sec. 9, L. 1963
189	1-4	Rep. Ch. 271, Sec. 33, L. 1963
196	1	Rep. Ch. 5, Sec. 496, L. 1971

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197	1	Rep. Ch. 82, Sec. 4, L. 1961
201	1	Rep. Ch. 5, Sec. 496, L. 1971
202	1	Rep. Ch. 5, Sec. 496, L. 1971
206	1	Rep. Ch. 185, Sec. 3, L. 1969
207	1	Rep. Ch. 5, Sec. 496, L. 1971
211	1–7	Rep. Ch. 320, Sec. 9, L. 1971
212	1	Rep. Ch. 42, Sec. 2, L. 1961
214	12	Rep. Ch. 368, Sec. 248, L. 1969
	13-15	Rep. Ch. 156, Sec. 11, L. 1965
	16	Rep. Ch. 368, Sec. 248, L. 1969
216	2–5	Rep. Ch. 5, Sec. 496, L. 1971
217	1	Rep. Ch. 369, Sec. 20, L. 1969
221	1	Rep. Ch. 369, Sec. 20, L. 1969
222	4	Rep. Ch. 306, Sec. 2, L. 1973
225	1, 2	Rep. Ch. 323, Sec. 63, L. 1973
226	1-6	Rep. Ch. 232, Sec. 9, L. 1961
228	1	Rep. Ch. 299, Sec. 3, L. 1973
	3–6	Rep. Ch. 299, Sec. 3, L. 1973
	8, 9	Rep. Ch. 299, Sec. 3, L. 1973
229	1	Rep. Ch. 189, Sec. 2, L. 1963
230	1	Rep. Ch. 5, Sec. 496, L. 1971
231	1	Rep. Ch. 197, Sec. 12–109, L. 1965
233	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
235	1	Rep. Ch. 199, Sec. 101, L. 1965
236	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
237	1	Rep. Ch. 5, Sec. 496, L. 1971
238	16	Rep. Ch. 147, Sec. 242, L. 1963
239	1–8	Rep. Ch. 403, Sec. 35, L. 1971
240	1	Rep. Ch. 197, Sec. 12–109, L. 1965
241	1	Rep. Ch. 42, Sec. 2, L. 1961
242	1	Rep. Ch. 2, Sec. 63, L. 1971
242	2	Rep. Ch. 266, Sec. 82, L. 1963
	3–9	Rep. Ch. 2, Sec. 63, L. 1971
244	1	Rep. Ch. 5, Sec. 496, L. 1971
247	1,2	Rep. Ch. 5, Sec. 496, L. 1971
249	1	Rep. Ch. 199, Sec. 101, L. 1965
250	1	Rep. Ch. 5, Sec. 496, L. 1971
251	1–15	Rep. Ch. 3, Sec. 9, Ex. L. 1967
	17	Rep. Ch. 272, Sec. 3, L. 1971

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2	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
7	1-7	Rep. Ch. 314, Sec. 14, L. 1969
12	1	Rep. Ch. 300, Sec. 143, L. 1967
13	1-2	Rep. Ch. 300, Sec. 143, L. 1967
15	1	Rep. Ch. 197, Sec. 12–109, L. 1965
17	1-4	Rep. Ch. 369, Sec. 20, L. 1969
19	1	Rep. Ch. 368, Sec. 248, L. 1969
30	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
33	1	Rep. Ch. 197, Sec. 12–109, L. 1965
35	1	Rep. Ch. 323, Sec. 63, L. 1973
37	1, 2	Rep. Ch. 511, Sec. 58, L. 1973
43	1	Rep. Ch. 5, Sec. 496, L. 1971
44	1	Rep. Ch. 5, Sec. 496, L. 1971
49	1	Rep. Ch. 213, Sec. 9, L. 1963
50	1	Rep. Ch. 196, Sec. 2, L. 1967
52	1	Rep. Ch. 5, Sec. 496, L. 1971
53	1	Rep. Ch. 5, Sec. 496, L. 1971
59	1	Rep. Ch. 197, Sec. 223, L. 1967
61	1	Rep. Ch. 428, Sec. 116, L. 1973

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66	5	Rep. Ch. 97, Sec. 32, L. 1961
80	1-2	Rep. Ch. 368, Sec. 248, L. 1969
85	1	S. M.R.App.Civ.P., Rules 9, 10, 25
88	1	Rep. Ch. 42, Sec. 2, L. 1961
89	1	Rep. Ch. 197, Sec. 12–109, L. 1965
91	1	Rep. Ch. 197, Sec. 12–109, L. 1965
92	1–12	Rep. Ch. 323, Sec. 63, L. 1973
93	1	Rep. Ch. 5, Sec. 496, L. 1971
96	1-2	Rep. Ch. 47, Sec. 14, L. 1963
104	1–10	Rep. Ch. 197, Sec. 12–109, L. 1965
105	1	Rep. Ch. 5, Sec. 496, L. 1971
106	1–3	Rep. Ch. 197, Sec. 12–109, L. 1965
109	1	Rep. Ch. 197, Sec. 12–109, L. 1965
110	1	Rep. Ch. 97, Sec. 32, L. 1961
112	1	Rep. Ch. 154, Sec. 17, L. 1965
116	1	Rep. Ch. 38, Sec. 2, L. 1963
117	1	Rep. Ch. 199, Sec. 101, L. 1965
	3	Rep. Ch. 199, Sec. 101, L. 1965
118	1	Rep. Ch. 199, Sec. 101, L. 1965
119	1–4	Rep. Ch. 307, Sec. 27, L. 1967
129	1	Rep. Ch. 102, Sec. 3, L. 1969
	2-3	Rep. Ch. 213, Sec. 9, L. 1963
130	1-2	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963
131	1	Rep. Ch. 99, Sec. 43, L. 1969
	2-3	Rep. Ch. 153, Sec. 14, L. 1965
133	1	Rep. Ch. 266, Sec. 82, L. 1963
	2	Rep. Ch. 199, Sec. 101, L. 1965
136	1	Rep. Ch. 236, Sec. 30, L. 1963
139	1-3	Rep. Ch. 285, Sec. 20, L. 1959
140	1	Rep. Ch. 5, Sec. 496, L. 1971
141	1	Rep. Ch. 5, Sec. 496, L. 1971
142	1–16	Rep. Ch. 197, Sec. 223, L. 1967
145	1	Rep. Ch. 300, Sec. 143, L. 1967
151	1	Rep. Ch. 236, Sec. 30, L. 1963
152	1	Rep. Ch. 368, Sec. 248, L. 1969
153	1	95-3203
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154	1	Rep. Ch. 199, Sec. 101, L. 1965
155	1	Rep. Ch. 158, Sec. 11, L. 1959
160	1	Rep. Ch. 5, Sec. 496, L. 1971
161	3	Rep. Ch. 428, Sec. 116, L. 1973
171	1-3	Temporary
172	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
175	1	Rep. Ch. 197, Sec. 12–109, L. 1965
177	1	Rep. Ch. 197, Sec. 12–109, L. 1965
179	1	Rep. Ch. 163, Sec. 1, L. 1959
180	1–3	Rep. Ch. 2, Sec. 63, L. 1971
181	1	Rep. Ch. 264, Sec. 10-102, L. 1963

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183	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	5	Rep. Ch. 197, Sec. 12–109, L. 1965
186	1	Rep. Ch. 232, Sec. 9, L. 1961
	3-6	Rep. Ch. 232, Sec. 9, L. 1961
187	1	Rep. Ch. 236, Sec. 30, L. 1963
191	1	Rep. Ch. 5, Sec. 496, L. 1971
192	1	Rep. Ch. 300, Sec. 143, L. 1967
194	1-3	Rep. Ch. 196, Sec. 2, L. 1967
	5-7	Rep. Ch. 196, Sec. 2, L. 1967
	9	Rep. Ch. 196, Sec. 2, L. 1967
203	1	Rep. Ch. 5, Sec. 496, L. 1971
206	1–7	Rep. Ch. 5, Sec. 496, L. 1971
207	1-2	Rep. Ch. 368, Sec. 248, L. 1969
208	1	Rep. Ch. 199, Sec. 1, L. 1961
210	1	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969
212	1	Rep. Ch. 369, Sec. 20, L. 1969
215	1–3	Rep. Ch. 197, Sec. 223, L. 1967
	4	Rep. Ch. 77, Sec. 14, L. 1965
	5–11	Rep. Ch. 197, Sec. 223, L. 1967
223	1	Rep. Ch. 221, Sec. 16, L. 1971
	4	Rep. Ch. 511, Sec. 58, L. 1973
	5	Rep. Ch. 221, Sec. 16, L. 1971
227	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
228	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
230	1	Rep. Ch. 147, Sec. 4, L. 1971
232	1	Rep. Ch. 5, Sec. 496, L. 1971
233	1	Rep. Ch. 5, Sec. 496, L. 1971
236	1	Rep. Ch. 5, Sec. 496, L. 1971
237	1	Rep. Ch. 202, Sec. 3, L. 1959
241	1	Rep. Ch. 5, Sec. 496, L. 1971
242	1	Rep. Ch. 5, Sec. 496, L. 1971
246	12	Rep. Ch. 126, Sec. 8, L. 1963
248	1–4	Rep. Ch. 2, Sec. 63, L. 1971
251	1	Rep. Ch. 197, Sec. 12–109, L. 1965
253	1	Rep. Ch. 471, Sec. 2, L. 1973
	2	Rep. Ch. 202, Sec. 2, L. 1973
	3	Rep. Ch. 155, Sec. 2, L. 1973
	4	Rep. Ch. 203, Sec. 2, L. 1973
	5	Rep. Ch. 252, Sec. 2, L. 1973
258	1	Rep. Ch. 197, Sec. 12–109, L. 1965
261	1	Rep. Ch. 199, Sec. 101, L. 1965
262	1	Rep. Ch. 201, Sec. 7, L. 1961
263	39	32-2142
	140	Rep. Ch. 139, Sec. 5, L. 1965
264	1–7	Rep. Ch. 197, Sec. 223, L. 1967
	9	Rep. Ch. 197, Sec. 223, L. 1967
	11	Rep. Ch. 197, Sec. 223, L. 1967
	12–13	Rep. Ch. 107, Sec. 18, L. 1965
	14-21	Rep. Ch. 17, Sec. 16, L. 1967
	22–24	Rep. Ch. 197, Sec. 223, L. 1967
266	1-3	Rep. Ch. 368, Sec. 248, L. 1969
	4-6	Rep. Ch. 156, Sec. 11, L. 1965
	7	Rep. Ch. 368, Sec. 248, L. 1969
272	1	Rep. Ch. 5, Sec. 496, L. 1971
277	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
278	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
279	1-7	Rep. Ch. 271, Sec. 33, L. 1963
	8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	9	Rep. Ch. 271, Sec. 33, L. 1963

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9	1	3-234
	2	3-235
13	1	Rep. Ch. 71, Sec. 3, L. 1973
15	1	Rep. Ch. 285, Sec. 20, L. 1959
18	1-2	Rep. Ch. 140, Sec. 32, L. 1969
	4-6	Rep. Ch. 140, Sec. 32, L. 1969
19	1	Rep. Ch. 2, Sec. 63, L. 1971
21	1	Rep. Ch. 97, Sec. 32, L. 1961
24	1	Rep. Ch. 56, Sec. 1, L. 1969
25	1	Rep. Ch. 266, Sec. 82, L. 1963; Ch. 2, Sec. 63, L. 1971
26	1	Rep. Ch. 5, Sec. 496, L. 1971
31	1	Rep. Ch. 5, Sec. 496, L. 1971
35	1–2	Rep. Ch. 197, Sec. 12–109, L. 1965
41	8	Rep. Ch. 43, Sec. 4, L. 1963
43	1	Rep. Ch. 197, Sec. 12–109, L. 1965
44	7	Rep. Ch. 140, Sec. 32, L. 1969
46	1–5	Rep. Ch. 138, Sec. 1, L. 1973
47	1	Rep. Ch. 491, Sec. 27, L. 1973
49	1-2	Rep. Ch. 148, Sec. 21, L. 1965
53	1	Rep. Ch. 314, Sec. 14, L. 1969
57	1	Rep. Ch. 511, Sec. 58, L. 1973
58	1-3	Rep. Ch. 237, Sec. 28, L. 1961
59	1-3	Temporary
61	1	Rep. Ch. 199, Sec. 101, L. 1965
67	1	Rep. Ch. 5, Sec. 496, L. 1971
81	1	Rep. Ch. 139, Sec. 5, L. 1965
84	1	Rep. Ch. 99, Sec. 43, L. 1969
85	1	Rep. Ch. 99, Sec. 43, L. 1969
90	1	Rep. Ch. 99, Sec. 43, L. 1969
93	1	Rep. Ch. 256, Sec. 2, L. 1973
96	1-2	Rep. Ch. 153, Sec. 14, L. 1965
104	1	Rep. Ch. 197, Sec. 12–109, L. 1965
111	1	Rep. Ch. 197, Sec. 223, L. 1967
113	1	Rep. Ch. 197, Sec. 12–109, L. 1965
114	1–8	Rep. Ch. 452, Sec. 46, L. 1973
116	1	Rep. Ch. 197, Sec. 12–109, L. 1965
118	1	Rep. Ch. 298, Sec. 9, L. 1973
119	1	Rep. Ch. 338, Sec. 43, L. 1969
121	1–3	Rep. Ch. 197, Sec. 12–109, L. 1965
122	1	95-3207
129	1	Rep. Ch. 250, Sec. 24, L. 1963
130	1	Rep. Ch. 250, Sec. 24, L. 1963
131	1	Rep. Ch. 250, Sec. 24, L. 1963
132	1	Rep. Ch. 250, Sec. 24, L. 1963
139	2	Rep. Ch. 470, Sec. 14, L. 1973
143	4-6	Rep. Ch. 193, Sec. 2, L. 1963
153	1	Rep. Ch. 266, Sec. 82, L. 1963
157	1	Rep. Ch. 99, Sec. 43, L. 1969
161	1	Temporary
	2	Const., Art. XIII, Sec. 6
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162	1	Rep. Ch. 5, Sec. 496, L. 1971
163	1	Rep. Ch. 5, Sec. 496, L. 1971
168	5-9	Rep. Ch. 314, Sec. 14, L. 1969
173	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Rep. Ch. 147, Sec. 242, L. 1963
176	1	Rep. Ch. 253, Sec. 2, L. 1973
	7–9	Rep. Ch. 298, Sec. 9, L. 1973
178	1-6	Rep. Ch. 251, Sec. 28, L. 1961
179	1	Rep. Ch. 452, Sec. 46, L. 1973
186	1	Rep. Ch. 164, Sec. 1, L. 1969
190	6	Rep. Ch. 154, Sec. 17, L. 1965
191	4	Rep. Ch. 405, Sec. 120, L. 1973
197	1-7	Unconstitutional, 134 M 92, 328 P 2d 644

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200	1–10	Rep. Ch. 280, Sec. 10, L. 1967
201	3	32-2142
202	1	Rep. Ch. 5, Sec. 496, L. 1971
206	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	2	Rep. Ch. 42, Sec. 2, L. 1961
211	1	Rep. Ch. 126, Sec. 8, L. 1963
218	1	84-3804
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	4	Effective Date and Repealing Clause
222	2	Rep. Ch. 140, Sec. 32, L. 1969
229	1-3	Temporary
230	1	Rep. Ch. 369, Sec. 20, L. 1969
231	1	Rep. Ch. 206, Sec. 27, L. 1963
234	1	Rep. Ch. 471, Sec. 2, L. 1973
	2	Rep. Ch. 202, Sec. 2, L. 1973
	3	Rep. Ch. 155, Sec. 2, L. 1973
	4	Rep. Ch. 203, Sec. 2, L. 1973
	6	Rep. Ch. 252, Sec. 2, L. 1973
235	2	Rep. Ch. 42, Sec. 1, L. 1973
246	9	Rep. Ch. 271, Sec. 8, L. 1959
	32	Rep. Ch. 247, Sec. 26, L. 1963
	35-39	Rep. Ch. 247, Sec. 26, L. 1963
	41	Rep. Ch. 271, Sec. 8, L. 1959
	43–48	Rep. Ch. 500, Sec. 20, L. 1973
	49	Rep. Ch. 271, Sec. 8, L. 1959
	50	Rep. Ch. 271, Sec. 8, L. 1959
	51	Rep. Ch. 500, Sec. 20, L. 1973
	52	Rep. Ch. 246, Sec. 12, L. 1963
	54	Rep. Ch. 246, Sec. 12 and Ch. 247, Sec. 26, L. 1963
	56-58	Rep. Ch. 247, Sec. 26, L. 1963
248	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
250	1	Rep. Ch. 5, Sec. 496, L. 1971
251	1	Rep. Ch. 5, Sec. 496, L. 1971
252	1	Rep. Ch. 307, Sec. 27, L. 1967
	2	Rep. Ch. 160, Sec. 24, L. 1965
254	1	Rep. Ch. 197, Sec. 12–109, L. 1965

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1	1-3	Temporary
2	1	12-337
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	3	Effective Date
3	1	16-1638
	2	Repealing Clause
4	1	76-107
	2	Repealing Clause
5	1	76-102
	2	76-108
	3	Repealing Clause
6	1	Rep. Ch. 314, Sec. 14, L. 1969
7	1	75-5201
	2	75-5202
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	5	75-5205
	6	75-5206
7	7	75-5207
	8	75-5208
	9	Effective Date
	10	Repealing Clause
8	1	11-1823
	2	Repealing Clause
9	1	25-231
	2	Repealing Clause
10	1	81-908
	2	Effective Date
11	1	16-1030
	2	Repealing Clause
12	1	26-907
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13	1-4	84-5606 note
14	1	Rep. Ch. 199, Sec. 101, L. 1965
	2	Repealing Clause

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15	1	Repealing Clause
16	1	79-2001
	2	79-2002
	3	79-2003
	4	Repealing Clause
	5	Effective Date
17	1	35-414
	2	Repealing Clause
	3	Effective Date
18	1-10	Rep. Ch. 368, Sec. 248, L. 1969
19	1	Rep. Ch. 199, Sec. 101, L. 1965
	2	Repealing Clause
20	1-2	Rep. Ch. 368, Sec. 248, L. 1969
	3	Repealing Clause
	4	Effective Date
21	1	48-134
	2	Repealing Clause
22	1	10-617
	2	Repealing Clause
23	1-7	Temporary
24	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
25	1	5-506
	2	Repealing Clause
26	1	70-401
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	3	70-403
	4	70-404
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	8	Effective Date
27	1-3	Temporary
28	1	11-1806
	2	Repealing Clause
29	1	11-1814
	2	Repealing Clause
30	1–3	Rep. Ch. 2, Sec. 63, L. 1971
	4	75-710.4
	5	Repealing Clause
31	1	26-222
	2	Repealing Clause
	3	Effective Date
32	1	Rep. Ch. 368, Sec. 248, L. 1969
	2	Repealing Clause
	3	Effective Date
33	1	Rep. Ch. 55, Sec. 3, L. 1965
	2	Appropriation
	3	Repealing Clause
34	1	26-201
	2	Repealing Clause
35	1	26-510
	2	26-511
	3	26-512
	4	Repealing Clause
36	1-5	Temporary
37	1	Rep. Ch. 266, Sec. 82, L. 1963
	2	Repealing Clause
38	1	11-966
	2	Repealing Clause
39	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
40	1	32-21-132
	2	Repealing Clause
41	1	76-117
	2	Repealing Clause
42	1	40-1302
	2	Repealing and Savings Clause
	3	Effective Date
43	1	40-1334
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	3	40-1336
	4	Repealing Clause
	5	Effective Date
44	1	26-332
	2	Repealing Clause
	3	Effective Date
45	1	16-4528
	2	Repealing Clause
46	1-5	Temporary
47	1	71-509
	2	Effective Date
	3	Repealing Clause
48	1	11-2008
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	3	Repealing Clause
49	1-3	84-5606 note
50	1	Rep. Ch. 368, Sec. 248, L. 1969
51	1	31-125
	2	Repealing Clause
52	1	Repealing Clause
	2	Effective Date
53	1	32-1518
	2	Repealing Clause
54	1	69-1512
	2	69-1516
	3	Repealing Clause
	4	Effective Date
55	1	Repealing Clause
56	1	Rep. Ch. 196, Sec. 2, L. 1967
	2	Repealing Clause
57	1	94-4106
58	1	Rep. Ch. 199, Sec. 101, L. 1965
	2	Repealing Clause
	3	Effective Date

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59	1	Rep. Ch. 99, Sec. 43, L. 1969
	2-3	Temporary
60	1-5	Rep. Ch. 196, Sec. 2, L. 1967
	6	Repealing Clause
61	1	Rep. Ch. 196, Sec. 2, L. 1967
	2	Repealing Clause
62	1	53-106.2
	2	53-106.3
	3	53-106.4
	4	53-106.6
	5	Repealing Clause
	6	Effective Date
63	1	72-150
	2	Repealing Clause
64	1-16	Rep. Ch. 368, Sec. 248, L. 1969
	17	11-2310
	18	16-2026
	19	Rep. Ch. 5, Sec. 496, L. 1971
	20	Repealing Clause
65	1	46-609
	2	Repealing Clause
66	1	25-605
	2	Repealing Clause
67	1	46-504
	2	Repealing Clause
	3	Effective Date
68	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
69	1	3-1510
	2	2-1511
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70	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
71	1	Rep. Ch. 266, Sec. 82, L. 1963
	2	Repealing Clause
72	1	Repealing Clause
	2	82-2112
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	4	Repealing Clause
73	1-3	Rep. Ch. 213, Sec. 9, L. 1963
	4	Effective Date
	5	Repealing Clause
74	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
75	1	Rep. Ch. 13, Sec. 84, L. 1961
76	1	66-1508
77	1	11-2008
	2	11-2010
	3	Repealing Clause
78	1	Rep. Ch. 99, Sec. 43, L. 1969
	2	Repealing Clause
79	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Effective Date
80	1	3-236
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	3	3-238
	4	Repealing Clause
81	1	Repealing Clause
	2	Effective Date
82	1	Rep. Ch. 127, Sec. 15, L. 1963
	2	Repealing Clause
83	1	53-422
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	3	Repealing Clause
84	1	31-155
	2	Repealing Clause
85	1	59-704
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86	1	93-1401
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87	1	Rep. Ch. 368, Sec. 248, L. 1969
	2	Repealing Clause
88	1	93-1509
	2	Repealing Clause
89	1	84-710
	2	Repealing Clause
90	1	28-105
91	1	28-109
92	1	28-110
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94	1	28-104
95	1	28-111
96	1	26-104
	2	Repealing Clause
97	1	59-1103
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	4	Separability Clause
	5	Repealing Clause
	6	Effective Date
98	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	2	Repealing Clause
99	1	Rep. Ch. 5. Sec. 496, L. 1971
	2	Repealing Clause
100	1	53-108
	2	Repealing Clause
101	1	Repealing Clause
102	1	Repealing Clause
103	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	2	Repealing Clause

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104	1	71-1207
	2	Repealing Clause
	3	Effective Date
105	1	71-410
	2	Repealing Clause
106	1	26-202.3
	2	Repealing Clause
107	1	11-1912
	2	Repealing Clause
108	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
109	1	31-105
	2	Repealing Clause
110	1	4-349
	2	Repealing Clause
111	1	11-2402
	2	Repealing Clause
112	1	46-1005
	2	Repealing Clause
	3	Effective Date
113	1	32-21-147
	2	Repealing Clause
114	1	5-909
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115	1	Rep. Ch. 236, Sec. 30, L. 1963
	2	Repealing Clause
116	1	16-2903
117	1	16-2428
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	5	Repealing Clause
118	1	11-2010
	2	Repealing Clause
119	1	26-103
	2	Repealing Clause
120	1	32-2150.1
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121	1	Rep. Ch. 5. Sec. 496, L. 1971
	2	Repealing Clause
122	1	84-1501.1
	2	84-1501.2
	3	Repealing Clause
123	1	Rep. Ch. 38, Sec. 2, L. 1963
	2	Repealing Clause
124	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
125	1	94-1823
	2	Repealing Clause
126	1	84-4711
	2	Effective Date
127	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Effective Date
128	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	2	Repealing Clause
129	1	Rep. Ch. 118, Sec. 32, L. 1969
	2	Repealing Clause
130	1	94-1805
131	1	Rep. Ch. 213, Sec. 9, L. 1963
	2	Repealing Clause
	3	Effective Date
132	1	16-910
	2	Repealing Clause
133	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	2	Repealing Clause
134	1	Rep. Ch. 197, Sec. 12–109, L. 1965
	2	Repealing Clause
135	1	4-317
	2	4-324
	3	Repealing Clause
	4	Effective Date
136	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963
	3	Repealing Clause
137	1	82-1008
	2	Repealing Clause
138	1	Rep. Ch. 256, Sec. 6, L. 1971
	2	Repealing Clause
139	1	Rep. Ch. 256, Sec. 6, L. 1971
	2	Repealing Clause
140	1	66-817
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	3	Repealing Clause
141	1	5-908
	2	Repealing Clause
142	1	Rep. Ch. 236, Sec. 30, L. 1963
	2	Repealing Clause
143	1	93-6301.1
	2	93-6301.2
	3	Effective Date
144	1	93-315
	2	93-316
	3	Repealing Clause
145	1	Rep. Ch. 39, Sec. 9, L. 1973
	2	Repealing Clause
146	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
147	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
	3	Effective Date

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148	1	82-1309
	2	82-1310
	3	Repealing Clause
	4	Effective Date
149	1-3	Rep. Ch. 17, Sec. 16, L. 1967
	4	Repealing Clause
150	1	16-1008A
151	1	Rep. Ch. 197, Sec. 223, L. 1967
	2	Repealing Clause
	3	Effective Date
152	1	71-509
	2	Repealing Clause
153	1	71-607
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154	1	Repealing Clause
155	1	92-1301
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	69	Repealing Clause
	70	Effective Date
156	1	79-2101
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	3	Repealing Clause
	4	Effective Date
157	1	43-801
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158	1	79-1012
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	11	Repealing Clause
159	1	Rep. Ch. 256, Sec. 6, L. 1971
	2	Repealing Clause
160	1	41-1801
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	6	Repealing Clause
161	1	93-302
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162	1	4-303
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162	3	Repealing Clause
	4	Effective Date
163	1	Repealing Clause
	2	Effective Date
164	1	11-2030
	2	Repealing Clause
	3	Effective Date
165	1	84-2006
	2	84-2007
	3	Repealing Clause
166	1	Rep. Ch. 127, Sec. 15, L. 1963
	2	Temporary
	3	Repealing Clause
167	1	Rep. Ch. 5, Sec. 496, L. 1971
168	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
169	1	28-101
	2	Repealing Clause
170	1	92-827
171	1	Rep. Ch. 246, Sec. 12, L. 1963
	2	Repealing Clause
172	1	84-2202
	2	Effective Date
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173	1	Rep. Ch. 298, Sec. 9, L. 1973
	2	Repealing Clause
	3	Effective Date
174	1	69-3401
	2	69-3402
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	4	69-3404
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	7	69-3407
	8	69-3408
	9	69-3409
	10	Separability Clause
	11	Repealing Clause
175	1	Rep. Ch. 369, Sec. 20, L. 1969
	2	Repealing Clause
176	1	84-2004
	2	Repealing Clause
	3	Effective Date
177	1	87-148
	2	Repealing Clause
	3	Effective Date
178	1	87-148
	2	Repealing Clause
	3	Effective Date
179	1	89-1209
	2	89-1210
	3	89-1211
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179	6	89-1214
	7	89-1215
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	9	89-1217
	10	89-1218
	11	89-1219
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	13	Effective Date
180	1	5-910
	2	Repealing Clause
181	1	84-5408
	2	Repealing Clause
	3	Effective Date
182	1	82-1231
	2	Repealing Clause
	3	Effective Date
183	1	11-1919
	2	Repealing Clause
	3	Effective Date
184	1	11-1918
	2	Repealing Clause
	3	Effective Date
185	1	91-321
	2	Repealing Clause
186	1	Rep. Ch. 256, Sec. 6, L. 1971
	2	Repealing Clause
187	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
	3–5	Rep. Ch. 5, Sec. 496, L. 1971
	6	Repealing Clause
188	1	50-474
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	4	Repealing Clause
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189	1	Rep. Ch. 199, Sec. 101, L. 1965
	2	Repealing Clause
	3	Effective Date
190	1	Repealing Clause
191	1-4	Unconstitutional, 137 M 557, 354 P 2d 552
192	1	27-403
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	11	Rep. Ch 107, Sec. 10 and Ch. 272, Sec. 2, L. 1971
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192	14	Repealing Clause
	15	Separability Clause
	16	Repealing Clause
	17	Effective Date
193	1-4	Unconstitutional, 137 M 557, 354 P 2d 552
194	1-4	Unconstitutional, 137 M 557, 354 P 2d 552
195	1	11-3901
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	2	Effective Date
	3	Repealing Clause
16	1	40-3128
	2	Repealing Clause
17	1	73-207
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18	1	93-2010
19	1	79-2001
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	4	Repealing Clause
	5	Effective Date
20	1	40-3126
	2	Repealing Clause
21	1	92-1401
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	6	Rep. Ch. 221, Sec. 2, L. 1963
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22	1	93-1901
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	9	Repealing Clause
23	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
24	1	16-1008B
25	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
	3	Effective Date
26	1	Repealing Clause
27	1	31-145
	2	Repealing Clause
28	1	75-5205
	2	Effective Date
29	1-5	Rep. Ch. 338, Sec. 43, L. 1969
	6	Repealing Clause
	7	Effective Date
30	1	16-1601
31	1	11-1310
	2	Repealing Clause
32	1	11-2202
33	1	59-510(2)
34	1	66-905
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	6	Separability Clause
	7	Repealing Clause
35	1–4	Rep. Ch. 5, Sec. 496, L. 1971
	5	Repealing Clause
36	1	11-3215
	2	Repealing Clause
37	1	46-503
	2	46-508
	3	Repealing Clause
	4	Effective Date
38	1	Rep. Ch. 368, Sec. 248, L. 1969
39	1	66-2501
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40	1	26-307
41	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
42	1	Rep. Ch. 197, Sec. 12–109, L. 1965
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43	1	41-701
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44	1	46-1101.1
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	7	Repealing Clause
45	1	Rep. Ch. 413, Sec. 51, L. 1971
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46	1	16-4527
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47	1	60-145
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48	1	16-1131
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49	1	92-1001
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55	1	44-127
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56	1	Rep. Ch. 5, Sec. 496, L. 1971
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57	1	Rep. Ch. 196, Sec. 15, L. 1965
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	5	Effective Date
58	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
59	1–10	Rep. Ch. 138, Sec. 1, L. 1973
60	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
61	1	40-3011
	2	Repealing Clause
	3	Effective Date
62	1–4	Rep. Ch. 5, Sec. 496, L. 1971
	5	Repealing Clause
63	1	11-4001
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64	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
	3	Repealing Clause
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65	1	40-3831
	2	Repealing Clause
	3	Effective Date
66	1	16-2618
67	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963
	3	Temporary
	4	Repealing Clause
68	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
	3	Effective Date
69	1	26-321
70	1	31-153
	2	Repealing Clause
71	1	48-118.1
	2	Rep. Ch. 232, Sec. 12, L. 1963
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72	1	26-202.3
73	1	76-101
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75	1	Repealing Clause
76	1	11-710
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78	1	89-1206
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79	1	Repealing Clause
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83	1	Rep. Ch. 5, Sec. 496, L. 1971
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84	1–7	Temporary
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87	1	Rep. Ch. 2, Sec. 63, L. 1971
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88	1	1-801
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90	1	Rep. Ch. 5, Sec. 496, L. 1971
91	1	79-1013
92	1	94-801-1
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93	1	Rep. Ch. 300, Sec. 143, L. 1967
94	1-2	Rep. Ch. 199, Sec. 101, L. 1965
95	1–5	Rep. Ch. 197, Sec. 223, L. 1967
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96	1	83-113
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97	1	82-109.1
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	17	26-123
	18	Rep. Ch. 197, Sec. 12–109, L. 1965
	19	Rep. Ch. 47, Sec. 14, L. 1963
	20	46-202
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	28	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
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101	1	31-147
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102	1	84-1505
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103	1	84-301
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104	1	Rep. Ch. 5, Sec. 496, L. 1971
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105	1	Rep. Ch. 5, Sec. 496, L. 1971
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106	1	59-801
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107	1	69-2701
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109	1	32-2142
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110	1	31-124
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112	1	16-2012
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113	1	46-1114
114	1, 2	Rep. Ch. 5, Sec. 496, L. 1971
115	1	66-816
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118	1	Rep. Ch. 264, Sec. 10-102, L. 1963
119	1	32-2148
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120	1	31-129
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121	1	Proposed Const. Amend., Art. III, Sec. 8 (Rejected)
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122	1	53-102
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123	1	Rep. Ch. 197, Sec. 12–109, L. 1965
124	1	Rep. Ch. 197, Sec. 12–109, L. 1965
125	1	31-146
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126	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Repealing Clause
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127	1	82-1109
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128	1	94-2604
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129	1	94-602
130	1	Rep. Ch. 196, Sec. 2, L. 1967
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131	1	94-3527.1
	2	Effective Date
132	1	10-611
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	3	Repealing Clause
	4	Effective Date
133	1	26-811
134	1	16-1601
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136	1	Repealing Clause
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137	1	31-126
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138	1	69-3505
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139	1	53-107
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140	1	31-131
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141	1-6	Temporary
142	1	82-1131
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143	1	5-1117
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144	1	81-1707
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145	1	Rep. Ch. 99, Sec. 43, L. 1969
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146	1	Rep. Ch. 153, Sec. 14, L. 1965
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147	1	Rep. Ch. 99, Sec. 43, L. 1969
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148	1	92-104
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149	1	94-801-2
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150	1	82-1904.1
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151	1–7	Rep. Ch. 5, Sec. 496, L. 1971
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152	1	Rep. Ch. 500, Sec. 20, L. 1973
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154	1	84-4903.2
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155	1	84-1501
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	84	Rep. Ch. 262, Sec. 16, L. 1969
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201	1	64-301
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202	1	94-2704.1
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203	1	82-3318
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204	1	66-1315
205	1	Rep. Ch. 5, Sec. 496, L. 1971
	2	Effective Date
206	1	11-2202
207	1	Rep. Ch. 197, Sec. 223, L. 1967
208	1	14-509
209	1	66-115
210	1	32-1627
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	3	Effective Date
211	1–3	Rep. Ch. 5, Sec. 496, L. 1971
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213	1	Rep. Ch. 5, Sec. 496, L. 1971
214	1	Rep. Ch. 5, Sec. 496, L. 1971
215	1	44-127
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216	1	25-605
217	1-2	Temporary
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218	1	Rep. Ch. 403, Sec. 35, L. 1971
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221	1-5	71-106 note
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228	1	94-35-274
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229	1	26-303.1
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230	1	94-3604
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231	1	82-3319
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236	1	26-114
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241	1	26-202.1
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243	1	Const., Art. V, Sec. 46
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251	1	81-1702.2
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	4	Effective Date
252	1	81-1101.1
	2	Effective Date
253	1	59-1110
254	1–3	Rep. Ch. 313, Sec. 22, L. 1967
255	1	71-209
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259	1	Rep. Ch. 5, Sec. 496, L. 1971
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260	1	16-912
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261	1	11-1834
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262	1	Rep. Ch. 5, Sec. 496, L. 1971
263	1	71-1601
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264	1, 2	84-5606 note
265	1	26-1601
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271	1	4-333
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3	1	12–343
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4	1	27–401
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32	1	95–2008.1
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33	1	26–202.3
34	1	26–301
35	1	Rep. Ch. 56, Sec. 1, L. 1969
36	1	66–506
	2	Effective Date
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37	1	26–202.3
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38	1	11–1102
39	1	81–304
40	1	41–1302
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57	1	Rep. Ch. 5, Sec. 496, L. 1971
58	1	Rep. Ch. 5, Sec. 496, L. 1971
59	1	45–401
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62	1	84–4901
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63	1	Repealing Clause
64	1	16–3006
65	1	Rep. Ch. 256, Sec. 2, L. 1973
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70	1	92–614
71	1	40–2821
72	1	84–4606
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74	1	53–101
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77	1	69–1501
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78	1	Rep. Ch. 298, Sec. 9, L. 1973
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80	1	11–3516
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83	1	32–3601
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85	1	Rep. Ch. 5, Sec. 496, L. 1971
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88	1	66–1302
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101	1	71–202
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102	1	51–401
103	1	Rep. Ch. 5, Sec. 496, L. 1971
104	1	84–1836
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118	1	Rep. Ch. 5, Sec. 496, L. 1971
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126	1	11–1104
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127	1	Repealing Clause
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128	1	16–1015
129	1	Rep. Ch. 2, Sec. 63, L. 1971
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131	1	66–114
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132	1	66–816
133	1	66–809
134	1	10–611.1
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135	1	94–1831
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143	1	32–3306
144	1	11–714
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145	1	84–4701.6
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147	1	73–201
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149	1	28–105
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150	1	Rep. Ch. 323, Sec. 63, L. 1973
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156	1	11–731
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157	1	11–967
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160	1	11–2026
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161	1	11–2023
162	1	69–3601
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164	1	Rep. Ch. 5, Sec. 496, L. 1971
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180	1	93–5846
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6	1	23-3318.1
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7	1	84-1501
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8	1	43-106.6
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38	1	23-2802
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51	1	89-1804
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225	1	82A-1011
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REVISED CODES OF MONTANA

VOLUME 1

Part 2

1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 1 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1 (PART 2) THROUGH VOLUME 504, PACIFIC REPORTER (2nd SERIES)

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



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CHAPTER 2—STATE AERONAUTICS COMMISSION

Section
1-201. Creation of state aeronautics commission.
1-202. Organization—meetings—reports.

1-201. Creation of state aeronautics commission. (a) Composition. There is hereby created a commission to be known as the state areonautics commission. Said commission shall consist of seven persons who shall be appointed by the governor within thirty days after the passage and approval of this act, and who shall serve without compensation except that they shall receive a per diem of twenty dollars ($20) for each day actually expended in the performance of their duties under this act and shall be reimbursed for all actual and necessary traveling expenses, incurred by them in the discharge of their official duties, provided, however, that no member of the commission shall receive per diem allowance in excess of one thousand dollars ($1,000) annually. The governor shall appoint the members of said commission in the following manner: One shall be selected from the Montana Pilots' Association; one from Montanans, Incorporated; one from the Municipal League; one from the County Commissioners Association; one selected from among those actively engaged in aviation education in Montana; one to be selected by the governor as a representative of interstate commercial airline operators, who must at the time of appointment, be an employee or official of such an operator, and whose residence must be within the state of Montana; and one to be selected by the governor, who is an active base operator in the state at the time of his appointment or an official of such base operator of flying services, or flying schools.

(b) The members of the said commission shall serve for a period of four (4) years from date of their appointment and until their successors are appointed and qualified. Provided, however, that in making said appointments, the governor may shorten the term of two (2) of said appointees to any period of time less than four (4) years so that the terms of office of all seven (7) members of the commission shall not expire in the same year. The members of the commission may be removed by

the governor after notice and hearing for inefficiency, neglect of duty or malfeasance in office.

History: En. Sec. 4, Ch. 152, L. 1945; amd. Sec. 1, Ch. 347, L. 1971.

Amendments

The 1971 amendment increased the per diem allowance from $10 to $20; increased the annual limit for per diem from $500 to $1,000; and made minor changes in punctuation and style.

Cross-References

Commission renamed and continued as advisory and quasi-judicial board, sec. 82A-905.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

1-202. Organization—meetings—reports. The commission shall, within thirty days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations. At such organization meeting it shall elect from among its members a chairman, a vice-chairman and a secretary, to serve for one year, and annually thereafter shall select such officers; all to serve until their successors are appointed and qualified. It shall at its initial meeting fix the date and place for its regular meetings. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called as provided by its rules and regulations. All regular and special commission meetings shall be open to the public. It shall report as provided in section 2 [82-4002] of this act. The fiscal year of the commission shall conform to the fiscal year of the state.

History: En. Sec. 5, Ch. 152, L. 1945; amd. Sec. 3, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provisions relating to the requirements of an annual report in the seventh sentence, and deleted a provision detailing contents of report.

1-204. General powers and duties of commission.

Cross-References

Commission functions transferred, sec. 82A-903(1).

CHAPTER 3—REGULATION AND LICENSES

Section
1-324. Publication of notice.

1-301. Regulation of aircraft, airmen, airports and air instruction.

Cross-References

Commission functions transferred, sec. 82A-903 (1).

1-323. Regulatory powers of commission, etc.

Cross-References

Functions retained by board of aeronautics, sec. 82A-905(4).

1-324. Publication of notice. Notice as required by section 1-323 shall be given by publication once a week for three (3) successive weeks in

a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by subdivisions (2) (b) and (9) of section 1-323, R. C. M. 1947, if no written protest or written request that the hearing be held is received by the commission within five (5) days after the date of the last publication of such notice, the commission may, in its discretion, vacate such hearing and fix and establish the rates, fares, charges, classifications and rules of the air carrier without hearing. The notice required herein shall state that the commission may vacate the hearing unless a written protest or request that the hearing be held is received by the commission as required by this section.

History: En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 208, L. 1969.

Amendments

The 1969 amendment authorized personal service by mail and provided that hearings on rates, fares, charges, classifications and rules of air carriers may be vacated if no written protest or request is received.

CHAPTER 4—STATE AIRPORTS

1-401. Acquisition and operation of state airports.

Cross-References

Commission functions transferred, sec. 82A-903 (1).

CHAPTER 5—MISCELLANEOUS

1-501. Receipt and disbursement of moneys.

Compiler's Notes

Section 84-1818, referred to in this section, was repealed by Sec. 20, Ch. 369, Laws 1969.

Cross-References

Commission functions transferred, sec. 82A-903 (1).

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

Section
1-804. Tax levy for establishment and operation of airports.
1-805.1. Validation of previous contracts and tax levies—1971 act.

1-801. (5668.25) Counties, cities and towns may acquire land, etc.

Cross-References

Municipal and regional airport authorities, secs. 1-901 to 1-927.

1-804. (5668.38) **Tax levy for establishment and operation of airports.** For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by sections 84-4701.1 and 84-4701.2, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such pur-

poses and the proportion each political subdivision joining in the venture shall pay, provided that no property within any political subdivision shall be subject to a tax pursuant to this section at an annual rate in excess of two (2) mills. Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due to the uniqueness of the subject matter, are hereby declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971; amd. Sec. 3, Ch. 501, L. 1973.

Amendments

The 1969 amendment added the provisions authorizing governing bodies of airports to set up annual reserve funds in their annual budget to resurface, overlay or improve existing runways, taxiways and ramps.

The 1971 amendment substituted "qualified electors" for "taxpayers affected thereby" in the proviso relating to bond elections.

The 1973 amendment inserted "or the all-purpose levy authorized by sections 84-4701.1 and 84-4701.2" in the first sentence; substituted the proviso at the end of the second sentence for "based upon the benefits it is determined each shall derive from the project"; and made a minor change in phraseology.

Repealing Clause

Section 2 of Ch. 122, Laws 1969 repealed all acts and parts of acts in conflict therewith.

1-805.1. Validation of previous contracts and tax levies—1971 act. All levies and expenditures heretofore made and engagements entered into by counties, cities, or towns for the purposes contemplated by chapter 8, Title 1, R.C.M. 1947, as amended, and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes, wherein a majority of the vote cast was in favor of such indebtedness, whether such counties, cities and towns were acting individually or jointly,

under the authority of this act, are hereby validated and declared legally created, entered into and made, and all evidence of such indebtedness is declared to be a legal obligation of the county, city or town wherein such a majority vote has been cast in favor of such indebtedness.

History: En. Sec. 1, Ch. 278, L. 1971.

Title of Act

An act validating and declaring legal all levies and expenditures heretofore made and engagements entered into by counties, cities or towns for the purposes of the Municipal Airport Act and all elections held in counties, cities or towns for the purpose of creating indebtedness for such purposes wherein a majority of the vote cast was in favor of such indebtedness; and providing for an effective date.

Effective Date

Section 2 of Ch. 278, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

1-817. Application of airport revenues and sale proceeds.

Allocation of Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

1-818. Federal and state aid.

Cross-References

Aeronautics commission functions transferred, sec. 82A-903 (1).

1-829 to 1-832. Unconstitutional.

Compiler's Notes

Sections 1-829 to 1-832 (Secs. 1 to 4, Ch. 281, L. 1969), authorizing passenger service charges against passenger air carriers, were held unconstitutional in Northwest Airlines, Inc. v. Joint City-County Airport Board, 154 M 352, 463 P 2d 470. See annotation below.

Constitutionality

This act (1-829 through 1-832) creates an unreasonabe and undue discrimination since imposition of charge based on number of emplaning passengers bears no reasonable relationship to use of airport facilities by carrier and is therefore unconstitutional as repugnant to "equal protection clause" of 14th Amendment of United States Constitution, and violates sections 3 and 27 of article III of Montana constitution. Northwest Airlines, Inc. v. Joint City-County Airport Board, 154 M 352, 463 P 2d 470.

CHAPTER 9—MUNICIPAL AND REGIONAL AIRPORT AUTHORITIES

Section
1-901. Definitions.
1-902. Aeronautics commission may exercise powers of airport authority—exceptions.
1-903. Airport operation and income.
1-904. Creation of municipal airport authority.
1-905. Creation of regional airport authority.
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1-908. Commissioners—compensation—meetings—officers.
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1-923. Supplemental authority.
1-924. Savings clause—airport zoning.
1-925. Short title.
1-926. Repealing clause.
1-927. Severability clause.

1-901. Definitions. The following words or terms whenever used or referred to in this chapter shall have the following respective meanings unless different meanings clearly appear from the context:

1. "Municipality" shall mean any county, city, town or public body of this state;

2. "Municipal airport authority" or "municipal authority" shall mean a municipal airport authority created pursuant to the provisions of section 1-904 of this chapter;

3. "Regional airport authority" or "regional authority" shall mean a regional airport authority created pursuant to the provisions of section 1-905 of this chapter;

4. "Airport authority" or "authority" shall mean any regional airport authority or municipal airport authority created pursuant to the provisions of this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority, pursuant to section 1-904;

5. "Governing body" shall mean bodies and boards by whatsoever names they may be known, having charge of finances and management of a municipality;

6. "Clerk" shall mean the custodian of the official records of a municipality;

7. "Bonds" shall mean any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this chapter;

8. "Airport" shall mean any area of land or water which is used, or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, including approaches and clear zones, together with all airport buildings and facilities located thereon;

9. "Air navigation facility" shall mean any facility—other than one owned and operated by the United States—used in, available for use in, or designed for use in aid of air navigation, including any structures, buildings, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices, used or useful as an aid, or constituting an advantage or convenience, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities;

10. "Airport hazard" shall mean any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft;

11. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof;

12. "Real property" shall mean lands, structures, buildings, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property; and

13. "Project" shall mean any airport operated by the authority, including all real and personal property, structures, buildings, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers and freight or as part of aviation operation air navigation, and air safety operation.

History: En. 1-901 by Sec. 1, Ch. 433, L. 1971.

Title of Act

An act to establish municipal and regional airport authorities; to provide for a tax levy for operation thereof; to provide for airport commissioners; to provide for the general power of an airport authority; to provide powers of eminent domain for issuance of bonds, and for the establishment of operational uses privileges; to provide for rules and regulations in connection with an airport authority; to provide for acceptance of federal aid for airports; to provide for joint operations of airport facilities and to provide for municipal co-operation in regard to airport operation. It is the intent of the legislative assembly that all sections of this bill be codified in Title 1, chapter 9, R. C. M. 1947.

1-902. Aeronautics commission may exercise powers of airport authority—exceptions. The Montana aeronautics commission shall have all powers of an airport authority as defined in this chapter, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry, and near state or national parks or near or in recreational areas as the aeronautics commission may determine to be in the public interest.

History: En. 1-902 by Sec. 2, Ch. 433, L. 1971.

Cross-References

Commission functions transferred, sec. 82A-903 (1).

1-903. Airport operation and income. The aeronautics commission shall have operational control of airports constructed under the provisions of section 1-902 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in a special operating fund to be known as the airport operating fund. All expenditures from such fund shall be within the limits of legislative appropriations and shall be made upon vouchers, signed and approved by the director of the aeronautics commission.

History: En. 1-903 by Sec. 3, Ch. 433, L. 1971.

Cross-References

Commission functions transferred, sec. 82A-903 (1).

1-904. Creation of municipal airport authority. Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, but thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: En. 1-904 by Sec. 4, Ch. 433, L. 1971.

1-905. Creation of regional airport authorty. 1. Two (2) or more municipalities may, by joint resolution create a public body, corporate and politic, to be known as a regional airport authority that the resolution creating a regional airport authority shall create a board of not less than five (5) commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement and adopt and amend from time to time rules for its own procedure not inconsistent with section 1-908.

2. A regional airport authority may be increased from time to time to serve one (1) or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided, that if a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligation, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

3. A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

4. A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least ten (10) days prior thereto in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

History: En. 1-905 by Sec. 5, Ch. 433, L. 1971.

1-906. Sinking funds for repair, maintenance and capital outlays. An airport authority may create a sinking fund and accumulate therein the sum of five million dollars ($5,000,000) together with interest thereon for the use, repairs, maintenance and capital outlays of an air navigation facility.

History: En. 1-906 by Sec. 6, Ch. 433, L. 1971.

1-908. Commissioners—compensation—meetings—officers. A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper.

History: En. 1-908 by Sec. 7, Ch. 433, L. 1971.

Compiler's Notes

As enacted, Chapter 433, Laws 1971 contained no section 1-907.

1-909. General powers of an authority. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes including, but not limited to, the power:

1. To sue and be sued; to have a seal; and to have perpetual succession;

2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may by purchase, gift, devise, lease, eminent domain proceedings

or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. For the purpose of this chapter, a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

5. To acquire, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports and air navigation facilities, provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality or public agency.

6. To establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters provided that the authority has obtained the approval of the owner or agency that controls the water; and to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

History: En. 1-909 by Sec. 8, Ch. 433, L. 1971.

1-910. Eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state, and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. 1-910 by Sec. 9, Ch. 433, L. 1971.

1-911. Disposal of airport property. Except as may be limited by the terms and conditions of any grant, loan or agreement, authorized by section 1-915 of this chapter, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

History: En. 1-911 by Sec. 10, Ch. 433, L. 1971.

1-912. Bonds and other obligations. (1) An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities,

(b) taxes levied pursuant to section 1-916, or other law, for airport purposes,

(c) grants or contributions from the federal government or

(d) other sources.

The bonds may be issued by resolution or resolutions of the authority, without an election, and without any limitation of amount except as follows: No such bonds shall be issued at any time if the total amount of principal and interest to become due in any year on such bonds, and on any then outstanding bonds for which revenues from the same source or sources are pledged, exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and the authority shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year. They may be sold at public or private sale and shall bear interest at a rate or rates not exceeding ten per centum (10%) per annum. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority shall be payable as to principal and interest solely from revenues of the authority, and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of section 84-4905(2)(a).

For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into or exercised by a municipality under Title 11, chapter 24. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(2) Subject to the conditions stated in this paragraph (2) the governing body of any municipality having a population in excess of ten thousand (10,000) may, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, by resolution covenant that, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such

deficiency and may further covenant that at any time a deficiency is likely to occur within one (1) year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other municipal taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of ten thousand (10,000) is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the municipalities shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution shall become effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for said purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by section 11-2308 and 11-2310 for an election called by cities and towns and section 16-202 and 16-2026 for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality shall have no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in paragraph (1) above.

History: En. 1-912 by Sec. 11, Ch. 433, L. 1971; amd. Sec. 1, Ch. 501, L. 1973.

Amendments

The 1973 amendment divided the section into numbered subsections; inserted clauses (a) and (b) in the first paragraph of subsection (1); inserted the first two sentences of the paragraph following the lettered clauses in subsection (1); inserted "Except as otherwise provided herein" at the beginning of the final sentence of the first paragraph after the lettered clauses; substituted "revenues of the authority" for "revenues of an airport or air navigation facility or facilities" in the same sentence; deleted "and that said bonds shall be issued as set forth in Title 11, chapter 24, R. C. M. 1947" from the end of the paragraph following the lettered clauses; added "regarding the source or sources from which such principal and interest are payable" at the end of the paragraph following the lettered clauses; substituted "by a political subdivision within the meaning of section 84-4905(2)(a)" at the end of the second paragraph after the lettered clauses for "and, together with interest thereon, and income therefrom, shall be exempt from all taxes"; substituted "and exercise any additional powers authorized to be made, entered into or exercised by a municipality under Title 11, chapter 24" at the end of the first sentence of the final paragraph of subsection (1) for "authorized to be made as security for revenue bonds"; inserted "Subject to the conditions stated in this paragraph (2)" at the beginning of subsection (2); substituted "may . . . by resolution covenant that . . . it will levy" for "shall be required . . . to levy" in the first sentence of subsection (2); substituted "may further covenant that . . . it will" for "may levy" later in the same sentence; substituted "but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency" at the end of the first sentence of subsection (2) and the last five sentences of subsection (2) for a proviso and final sentence requiring publication of the resolution and prohibiting further proceedings on protest by owners of 20% of the taxable property; and made minor changes in phraseology and style.

1-913. Operation and use privileges. 1. In connection with the operation of an airport or air navigation facility owned or controlled by an

authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed thirty (30) years with any persons:

a. Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

c. Making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class or [of] privilege of [or] service and shall be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

2. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 1-919 of this chapter, an authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed thirty (30) years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection 1 of this section.

History: En. 1-913 by Sec. 12, Ch. 433, L. 1971.

1-914. Regulations. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the commission shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

History: En. 1-914 by Sec. 13, Ch. 433, L. 1971.

1-915. Federal and state aid. 1. An authority is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and ex-

pended by the authority upon such terms and conditions as are prescribed by the state.

2. An authority is authorized to designate the state aeronautics commission as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter; and to designate the state aeronautics commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an ageement with the aeronautics commission prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the state aeronautics commission shall be accepted and transferred or expended by said commission upon such terms and conditions as are prescribed by the United States. All moneys received by the state aeronautics commission pursuant to this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes.

History: En. 1-915 by Sec. 14, Ch. 433, L. 1971.

Cross-References

Aeronautics commission functions transferred, sec. 82A-903 (1).

1-916. Tax levy may be certified by airport authority or municipality. The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 1-912 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

History: En. 1-916 by Sec. 15, Ch. 433, L. 1971; amd. Sec. 2, Ch. 501, L. 1973.

Amendments

The 1973 amendment substituted "shall levy" for "may levy" in the first sentence;

and inserted "or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority" at the end of the second sentence.

1-917. County tax levy for airport purposes. In counties supporting airports or airport authorities, a levy, as provided for in section 1-804, R.C.M. 1947, may be made for such purposes.

History: En. 1-917 by Sec. 16, Ch. 433, L. 1971.

1-918. Joint operations. 1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision or agency of an adjoining state; and the term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

2. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Each agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, capital outlay, and maintenance, to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to, or at such times as said property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

3. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power, as agent of the participating public agencies, to plan, acquire, establish, develop,

construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility or airport hazard, subject to the limitations of subsection 4 of this section.

4. a. The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10, or as otherwise specifically authorized by the constituent public agencies.

b. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

c. Eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common.

d. The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by section 1-913 of this chapter.

e. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by section 1-913 of this chapter shall become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, regulations, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

5. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in subsection 4 of this section.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971.

1-919. Public purpose. The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, de-

velopment, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. 1-919 by Sec. 18, Ch. 433, L. 1971.

1-920. Airport property and income exempt from taxation. Any property in this state acquired by an authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof, shall be exempt from taxation to the same extent as other property used for public purpose.

History: En. 1-920 by Sec. 19, Ch. 433, L. 1971.

1-921. Municipal co-operation. For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created may, upon such terms, with or without consideration, as it may determine,

1. Lend or donate money to the authority;

2. Provide that all or a portion of the taxes of funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;

3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such airports or air navigation facilities;

4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

6. Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and co-operate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

7. Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433, L. 1971.

1-922. Out-of-state airport jurisdiction authorized — reciprocity with adjoining state and governmental agencies. For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

The powers granted in this section may be exercised jointly by two (2) or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

This section may be cited as the "Extraterritorial Airports Section."

History: En. 1-922 by Sec. 21, Ch. 433, L. 1971.

1-923. Supplemental authority. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise such powers as are necessary incidental to the exercise of such general and special powers.

History: En. 1-923 by Sec. 22, Ch. 433, L. 1971.

1-924. Savings clause—airport zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. 1-924 by Sec. 23, Ch. 433, L. 1971.

1-925. Short title. This chapter may be cited as the "Airport Authorities Act."

History: En. 1-925 by Sec. 24, Ch. 433, L. 1971.

1-926. Repealing clause. All acts or parts of acts in conflict herewith are hereby repealed.

History: En. 1-926 by Sec. 25, Ch. 433, L. 1971.

1-927. Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part that remains in effect in all valid applications are severable from the invalid applications.

History: En. 1-927 by Sec. 26, Ch. 433, L. 1971.

Effective Date

Section 27 of Ch. 433, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

CHAPTER 10—AIRPORT PASSENGER SERVICE CHARGES

Section
1-1001. Passenger air carrier defined.
1-1002. Service charge authorized—collection—audit—deposit in fund.
1-1003. Collection of service charge by carrier.
1-1004. Civil proceedings for collection of charge—misdemeanor.
1-1005. Carrier's fee for collection—restriction on fees paid by passenger.

1-1001. Passenger air carrier defined. As used in this act: "Passenger air carrier" means a common carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a regular schedule or schedules, and a carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a contract or charter basis.

History: En. Sec. 1, Ch. 427, L. 1973.

Title of Act

An act authorizing cities, counties and airport authorities to impose reasonable passenger service charges for the use of certain public airports to be collected either by passenger air carriers, if they agree to collect the charge on a contract basis, or to be collected by airport personnel; providing for reporting, collection, disposition and use thereof; providing penalties; and providing an effective date.

1-1002. Service charge authorized—collection—audit—deposit in fund. (1) Every city or county or airport authority which constructs, operates or maintains, individually or jointly, a public airport with funds contributed in whole or in part, directly or indirectly, by the state, county, city or other public authority, is authorized and empowered to charge a reasonable service charge not to exceed two dollars ($2) per day, for each passenger enplaning upon every passenger air carrier aircraft at any such public airport as a point of origin for transportation purposes. The charge authorized to be imposed herein is in consideration of the use of the airport and associated airport facilities provided by the public for taking off and landing of commercial passenger aircraft, for providing facilities for the passengers thereof, and to help defray the cost of furnishing, operating, improving, maintaining and protecting the public airport and related facilities and the passengers, crews and equipment. The charge herein provided for is in addition to any other charges that may be required or imposed by the authority for transportation or other services provided. In the alternative, said city, county, or airport authority may collect the charge itself or cause said service charge to be collected directly from the enplaning passenger by its agents or employees.

(2) Each passenger air carrier which agrees by contract to collect said service charge shall:

(a) before the fifteenth of each month, file with the city, county, or airport authority, or responsible board thereof, a return showing the number of passengers for hire enplaning on aircraft of the passenger air carrier at the respective airport during the preceding calendar month;

(b) file with the return, additional other pertinent information required by the respective airport;

(c) remit with the return, the service charges imposed under this act, if, by agreement with the airport board or authority, they have contracted to collect the charge from the enplaning passenger.

(3) Before the first day of the calendar month following that in which a return is filed, the respective airport board or governing authority shall:

(a) audit the return;

(b) make any exceptions to the report in writing to the air carrier. If none is made, the report and remittance will be deemed correct;

(c) in the case of a jointly operated airport, the carrier will remit to the governing board who shall be responsible for its proper disposition as directed by the governing bodies in accordance with the provisions below.

(4) All service charges received by counties and cities under the provisions of this act shall be deposited in the airport fund of the county or city or in the joint airport fund of the city and county and shall be used for construction, improvement, operation, maintenance, protection and repair of its public airport or for the retirement of bonds issued for the construction, improvement or other expenditures of the airport, including the protection of aircraft passengers, crews and air carrier equipment.

History: En. Sec. 2, Ch. 427, L. 1973.

1-1003. Collection of service charge by carrier. Nothing in this act shall prevent a passenger air carrier from collecting, directly or indirectly, the service charge payable for each paying passenger from the passenger, but the air carrier shall collect the service charge only if it enters into a voluntary agreement to do so.

History: En. Sec. 3, Ch. 427, L. 1973.

1-1004. Civil proceedings for collection of charge—misdemeanor. If any person, firm, or corporation subject to the provisions of this act fails or neglects to pay the service charges, the same may be collected through civil proceedings in an appropriate court. Passengers refusing to pay said service charge shall be guilty of a misdemeanor, punished accordingly, and, also, they may be refused permission to enplane.

History: En. Sec. 4, Ch. 427, L. 1973.

1-1005. Carrier's fee for collection—restriction on fees paid by passenger. Air carrier may, by contract with the airport board or authority involved, collect the charge from the passenger, and in so doing, be entitled to a fee for doing so. This may be a percentage of said charge. Or, the airport board or authority may collect the charge directly from the enplaning passenger. Provided, however, no passenger shall pay more than one (1) charge during any twenty-four (24) hour period, even though they may

board several planes in different Montana cities during that period. In such cases, only the charge, if any, in effect at the first airport used during said twenty-four (24) hour period shall govern. No other charge shall be payable at any other airport by that same passenger during the same twenty-four (24) hour period.

History: En. Sec. 5, Ch. 427, L. 1973.

Effective Date

Section 6 of Ch. 427, Laws 1973 read "This act is effective thirty (30) days after its passage and approval." Approved March 21, 1973.

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) Agency defined.

Factors Determining Existence of Agency

Where service station proprietor was not required to file any written reports to oil company, proprietor could stock any merchandise of his choosing, oil company did not inspect service station and did not require proprietor to wear any particular uniform or to operate station during any particular hours, and only written agreements between oil company and proprietor were equipment leases and truck rental; oil company was not liable for injury sustained by third person on service station premises due to gasoline fire since relationship between oil company and proprietor was not one of actual agency under this section. Elkins v. Husky Oil Co., 153 M 159, 455 P 2d 329.

2-106. (7933) Ostensible agency.

Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under this section or section 2-124, and therefore oil company was not liable for injury sustained by third person on service station premises. Elkins v. Husky Oil Co., 153 M 159, 455 P 2d 329.

Pilot was not ostensible agent of aviation service where owner of plane made own arrangements with pilot and plaintiff's decedent did not rely on aviation service's responsibility, even though aviation service had introduced pilot to plane owner, had previously supplied its own employees as pilots, furnished weather information for flight plans, and organized recovery activities after plane had gone down. Calkins v. Oxbow Ranch, Inc., — M —, 495 P 2d 1124.

2-122. (7945) Measure of agent's authority.

Failure To Make Authority Known

Authority of bank to apply funds from check endorsed in blank by debtor and delivered to bank by his wife was not measureable in terms of authority that debtor conferred upon his wife without regard to whether that authority or its limitations were made known to bank. Baker Nat. Bank v. Lestar, 153 M 45, 453 P 2d 774.

2-124. (7947) Ostensible authority defined.

Insufficient Evidence

Fact that service station proprietor displayed signs advertising oil company's products and honored oil company's credit cards, was not sufficient to make proprietor ostensible agent of oil company under this section or section 2-106, and therefore oil company was not liable for injury sustained by third person on service station premises. Elkins v. Husky Oil Co., 153 M 159, 455 P 2d 329.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

Chapter
1. Department and commissioner of agriculture—creation and general powers, 3-106, 3-116 to 3-123.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-228.1 to 3-228.7, 3-233.
3. Seed dealers, processors and warehousemen, 3-310 to 3-317.
5. Protein testing of grain, 3-512.
8. Agricultural seeds, 3-802.1 to 3-802.3, 3-803, 3-804, 3-806.1, 3-807, 3-808, 3-810 to 3-814, 3-820, 3-821.
14. Standard grades and brands for Montana farm products, 3-1401 to 3-1407, 3-1409, 3-1410.
15. Miscellaneous powers and duties of department of agriculture, 3-1503.
17. Commercial fertilizer—regulation of sale, 3-1729 to 3-1734.
19. Mustard seed—grade requirements—purchaser's bond and license, 3-1902.
20. Commercial feeds—regulation, 3-2025 to 3-2039.
22. Poultry improvement, Repealed—Section 6, Chapter 46, Laws of 1957; Section 1, Chapter 138, Laws of 1973.
23. Eggs and egg dealers—license, 3-2301, 3-2306, 3-2308, 3-2310, 3-2315.
24. Manufactured dairy products, 3-2488 to 3-24-111, 3-24-112.1 to 3-24-124, 3-24-126 to 3-24-137.
29. Wheat research and marketing, 3-2911, 3-2913, 3-2914, 3-2917.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE—CREATION AND GENERAL POWERS

Section
3-106. Biennial report.
3-116. Purpose of act.
3-117. Definitions.
3-118. Agricultural marketing co-ordinator—qualifications—responsibilities.
3-119. Co-ordinator's duties.
3-120. Co-ordinator under supervision of commissioner of agriculture.
3-121. Agricultural marketing advisory body—composition—meetings—duties—reimbursement.
3-122. Co-ordinator's recommendations—commissioner's reports.
3-123. State agencies participating in marketing to co-operate.

3-101. (3555) Department of agriculture, labor and industry—creation.

Cross-References

Department abolished and functions transferred, sec. 82A-302(1).

3-101.1. Repealed.

Repeal

Section 3-101.1 (Sec. 6, Ch. 177, L. 1951), separating the departments of agriculture and labor and industry, was repealed by Sec. 58, Ch. 100, Laws 1973.

3-106. (3560) **Biennial report.** The commissioner of agriculture shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 216, L. 1921; reen. Sec. 3560, R. C. M. 1921; amd. Sec. 4, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provisions relating to the requirements of an annual report.

3-107. (3561) **Powers and duties of department.**

Cross-References

Department abolished and functions transferred, sec. 82A-302 (1).

3-110. (3564) **Regulation of farming industry and allied subjects.**

Compiler's Notes

Sections 3-801 and 3-802, contained in the reference to sections 3-801 to 3-808 in this section, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-116. Purpose of act. It is the purpose of this act to create the position of agricultural marketing co-ordinator. It is the intent of the legislature in creating this position to have the agricultural marketing co-ordinator co-ordinate marketing all the way from the initial producer to the consumer. It is further the intent of this act to reduce marketing cost by empowering the co-ordinator to assist both producer and industry to find ways to more efficiently market their products. The co-ordinator will also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. He will work with farm leaders, farmer co-operatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups and others as a means of correcting marketing inefficiencies or eliminating restrictions.

History: En. Sec. 1, Ch. 330, L. 1969.

Title of Act

An act to establish within the department of agriculture of the state of Montana an agricultural marketing co-ordinator and empower the co-ordinator to analyze, advise, and make necessary recommendations in the field of agricultural marketing.

3-117. Definitions. As used in this act unless the context indicates otherwise:

(1) "Marketing" means the sum total of activities involved in getting agricultural products from the producer to the consumer and it includes transportation, processing, and distribution.

(2) "Agricultural products" means crops, livestock and livestock products.

(3) "Commissioner" means commissioner of agriculture.

History: En. Sec. 2, Ch. 330, L. 1969.

3-118. Agricultural marketing co-ordinator — qualifications — responsibilities. (1) There shall be within the department of agriculture of the state of Montana an agricultural marketing co-ordinator. He shall be a graduate of an accredited college with a master's degree in marketing or related field; he must possess the ability to plan, organize and carry out an effective marketing program; he must possess the ability to work harmoniously with other staff members and professional members in other organizations and industry; and he must have a minimum of two (2) years' experience in marketing or related fields.

(2) The co-ordinator is primarily responsible for providing leadership in marketing. He must keep informed in the subject matter related to this assignment. His major responsibility is to identify major needs and estab-

lish priorities in marketing and assist in developing marketing programs that will be directed toward a solution of these needs.

History: En. Sec. 3, Ch. 330, L. 1969.

Cross-References

Co-ordinator's position abolished and functions transferred, sec. 82A-302(2).

3-119. Co-ordinator's duties. It shall be the duty of the marketing co-ordinator:

(1) To keep abreast of research results in the subject matter area of marketing;

(2) To co-ordinate work with local, state and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) To develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) To co-ordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) To investigate the costs of marketing;

(6) To gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices and rates, including common and cold storage of food products;

(7) To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors and consumers of food products;

(8) To investigate the practice and methods concerning the marketing of agricultural products;

(9) To act as mediator or arbitrator, when invited, in any controversy or issue that may arise between producers and distributors;

(10) To assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) Appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969.

3-120. Co-ordinator under supervision of commissioner of agriculture. The agricultural marketing co-ordinator shall be under the supervision of the commissioner of agriculture of the state of Montana.

History: En. Sec. 5, Ch. 330, L. 1969.

3-121. Agricultural marketing advisory body—composition—meetings—duties—reimbursement. There is an agricultural marketing advisory body. It shall consist of nine (9) members. The dean of the school of agriculture at Montana state university, and the commissioner of agriculture shall be ex officio members. Seven (7) members shall be appointed by the commissioner of agriculture from representatives from transportation, representatives from farm and commodity organizations, representatives from

the field of processing, representatives from the field of retailers and representatives of research and educational institutions. No more than four (4) of those members appointed shall be from the same political party, and those appointed shall serve at the pleasure of the commissioner. This advisory body shall meet at the call of the commissioner, but at least once a year. This advisory body shall advise, assist and direct the marketing co-ordinator in implementing the provisions of this act. They shall receive reimbursement for necessary expenses incurred in carrying out the provisions of this act.

History: En. Sec. 6, Ch. 330, L. 1969.

Cross-References

Advisory body abolished, sec. 82A-305 (1).

3-122. Co-ordinator's recommendations — commissioner's reports. (1) The agricultural marketing co-ordinator shall make written recommendations to the commissioner concerning the needs for the development of new and improved systems for marketing agricultural products. He shall also recommend changes or additions for improved marketing services.

(2) The commissioner shall submit an annual written report to the governor on or before October 1 of each year containing the findings, conclusions, and recommendations of the agricultural marketing co-ordinator. He may also submit a report to the next legislative assembly.

History: En. Sec. 7, Ch. 330, L. 1969.

3-123. State agencies participating in marketing to co-operate. All agencies of the state of Montana who participate in marketing as defined in section 2 [3-117], subsection (1) of this act shall co-operate and assist with the agricultural marketing co-ordinator.

History: En. Sec. 8, Ch. 330, L. 1969.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—REGULATION OF GRAIN WAREHOUSEMEN

Section
3-228.1. Definitions.
3-228.2. Licensing of grain merchandisers—fees—exemptions.
3-228.3. Suspension or revocation of license.
3-228.4. Appointment of agent to receive process by nonresident licensee.
3-228.5. Bond—filed before issuance or renewal of license.
3-228.6. Insurance required of warehousemen.
3-228.7. Violation as misdemeanor.
3-233. Fees—disposition.
3-234 to 3-238. Transferred from Title 94.

3-202. (3575.2) **Repealed.**

Repeal

Section 3-202 (Sec. 2, Ch. 124, L. 1927; Sec. 2, Ch. 31, L. 1933; Sec. 2, Ch. 146, L. 1939; Sec. 1, Ch. 109, L. 1945; Sec. 1, Ch. 163, L. 1947; Sec. 1, Ch. 89, L. 1953; Sec. 1, Ch. 85, L. 1957; Sec. 1, Ch. 145, L. 1961), relating to fees to be paid to state sealer of weights and measures, was repealed by Sec. 43, Ch. 99, Laws 1969.

3-205. (3576) **Inspectors of grain, etc.**

Cross-References

Department abolished and functions transferred, sec. 82A-302 (1).

3-228. (3589) **Repealed.**

Repeal

Section 3-228 (Sec. 33, Ch. 216, L. 1921; Sec. 5, Ch. 41, L. 1923; Sec. 1, Ch. 145, L. 1959; Sec. 3, Ch. 224, L. 1961; Sec. 1, Ch. 27, L. 1963; Sec. 1, Ch. 412, L. 1971), relating to bonds and licensing of warehouseman, track buyers, grain dealers, and elevator operators, was repealed by Sec. 9, Ch. 39, Laws 1973. For new law, see secs. 3-228.1 to 3-228.7.

3-228.1. Definitions. Unless the context requires otherwise, as used in this act:

(1) "Person" means any person, merchandiser, grain dealer, firm, public warehouseman, commercial feed lot operator, trucker, exchange, broker, partnership, corporation, organization, commissionman, trust, association of persons, track buyer, shipper, hauler, contractor, cash buyer, unincorporated association, municipality, or society, however formed.

(2) "Grain" includes the natural products of the farm and shall also be construed to include flax.

(3) "Haul" means to transport grain or farm products by any vehicle on land or on water.

(4) "Merchandise" means to sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid and distribute, abet in the movement of any commodity, and assemble and distribute farm products or grain.

(5) "For hire" means for remuneration of any kind, paid or promised either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. Transportation by a person not in the transportation business is not a service for hire, even though the person owning the property transported shares in the cost or pays for the movement.

(6) "Department" means department of agriculture.

History: **En. Sec. 1, Ch. 39, L. 1973.**

Title of Act

An act to provide for the licensing and bonding of merchandisers of grain; and repealing section 3-228, R. C. M. 1947.

3-228.2. Licensing of grain merchandisers—fees—exemptions. (1) A person may not merchandise grain without obtaining a license under this act and without obtaining a certificate of authority if that certificate is required under section 15-2363, R.C.M. 1947.

(2) Licenses to engage in the business of merchandising of grains shall be issued by the department to reputable persons who apply in writing, submit the scheduled fee, and set forth under oath the place where the applicant intends to carry on the business for which the license is desired. A separate license is required for each place of business. Each vehicle or vessel used shall be noted on the application.

(3) A person merchandising grain shall before July 1 pay the department a minimum license fee of fifteen dollars ($15) for each year or part of a year, for each place of business owned, operated, or conducted by that person. The department may by rule establish the license fees, which may be graduated according to the volume of business conducted by a licensee

and which shall bear a reasonable relationship to the cost of administering this act and section 3-229.

(4) All license fees shall be transmitted to the state treasurer, and shall be deposited in the general fund.

(5) All licenses expire on June 30 of each year.

(6) A person is exempt from the licensing requirement of this section if he:

(a) is a producer or a feed lot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own feed lot or his farm;

(b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed;

(c) hauls grain for hire, for a producer or feed lot operator for the producer's or feed lot operator's own use within Montana, and does not acquire title to the grain;

(d) is a custom combiner hauling grain that he himself combines.

History: En. Sec. 2, Ch. 39, L. 1973.

3-228.3. Suspension or revocation of license. (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act [82-4201 to 82-4225] has been afforded to the licensee, suspend or revoke a license if the licensee has failed to comply with this act or rules of the department, or if the licensee has:

(a) violated this act or section 3-229;

(b) been found guilty of fraud, deceit, dishonesty, forgery, burglary, or larceny;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where the public health, safety, or welfare imperatively requires emergency action.

History: En. Sec. 3, Ch. 39, L. 1973.

3-228.4. Appointment of agent to receive process by nonresident licensee. A nonresident applying for a license shall file a written power of attorney designating the secretary of state as the agent of the nonresident upon whom service of process may be had in the event of any legal action against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department shall be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

History: En. Sec. 4, Ch. 39, L. 1973.

3-228.5. Bond filed before issuance or renewal of license. (1) Before a license is issued or renewed the applicant or licensee shall file with the department a bond in an amount the department prescribes, but not less than fifteen thousand dollars ($15,000). The bond shall:

(a) cover the period of one (1) license year or any part of the license year;

(b) be executed by a corporate surety authorized to do business in the state and be conditioned upon the faithful performance of the acts and duties required by section 3-229;

(c) be filed with the department before July 1 each year on a form prescribed by the department.

(2) The department may require an additional bond, if the grain business conducted warrants an increase, which shall cover all transactions of merchandising grains.

(3) A person injured by breach of an obligation, for which a bond is given to the department, may take action against the bond in his own name to recover damages caused by the breach.

(4) Liability of the surety upon the bond is limited to the amount of the bond. However, if two (2) or more persons are injured by breach of the obligations for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

(5) All bonds expire on June 30 each year.

History: En. Sec. 5, Ch. 39, L. 1973.

3-228.6. Insurance required of warehouseman. In addition to the bond and license, a public warehouseman shall obtain and maintain insurance approved by the department as adequate to protect the holders of warehouse receipts from loss. A license shall not be issued to a public warehouseman or may be revoked, if the public warehouseman fails to comply with this insurance requirement.

History: En. Sec. 6, Ch. 39, L. 1973.

3-228.7. Violation as misdemeanor. A person who violates this act is guilty of misdemeanor and shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500). Each day of violation is a separate offense.

History: En. Sec. 7, Ch. 39, L. 1973.

Separability Clause

Section 8 of Ch. 39, Laws 1973 read "If any part of this act is invalid, all valid parts that are severable from the invalid part remain in effect."

Repealing Clause

Section 9 of Ch. 39, Laws 1973 read "Section 3-228, R. C. M. 1947, is repealed."

3-233. Fees—disposition. All fees and other charges fixed by the department including fees for the inspection, grading, weighing and protein-testing of grain, shall be kept as near the actual cost of such services as possible. All those fees and charges shall be paid to the department and deposited with the state treasurer. The state treasurer shall place all the fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved as provided by law. No funds of the state shall

be used by the department in carrying out such services, except moneys presently appropriated.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963; amd. Sec. 1, Ch. 70, L. 1973.

Amendments

The 1973 amendment substituted "department" for "commissioner of agriculture" throughout the section; deleted from the third sentence a provision for placement of 5% of the fees and charges in the general fund; and made minor changes in style.

3-234 to 3-238. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-35-270 to 94-35-271.3. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
3-234	94-35-270
3-235	94-35-271
3-236	94-35-271.1
3-237	94-35-271.2
3-238	94-35-271.3

CHAPTER 3—SEED DEALERS, PROCESSORS AND WAREHOUSEMEN

Section
3-310. Definitions.
3-311. Licensing—issuance—application—fee—bonding—insurance.
3-312. Screenings—restrictions on movements.
3-313. Dealer's license—exception—fee—application—violation.
3-314. Violations.
3-315. Rules—promulgated by department.
3-316. Cancellation of license—misdemeanor—enforcement proceedings.
3-317. Deposit of funds.

3-301 to 3-309. (3592.1 to 3592.9) Repealed.

Repeal

Sections 3-301 to 3-309 (Secs. 1 to 9, Ch. 50, L. 1927; Secs. 1 to 3, Ch. 158, L. 1951), relating to seed warehousemen, were repealed by Sec. 9, Ch. 442, Laws 1973. For new law see secs. 3-310 to 3-317.

3-310. Definitions. When used in this act:

(1) "Department" means the department of agriculture.

(2) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and includes lawn seeds and mixtures of seeds.

(3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to increase seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, copartnership, corporation, or association.

(5) "Public agricultural seed warehouse" means and includes any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.

(6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.

(7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or for resale and who

does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a "seed buyer" is not included in this term.

(8) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds to the ultimate consumer.

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in section 3-802.2 when such seed is distributed in Montana.

(10) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse.

(12) Bin run seed sales from one farmer to another farmer mean buyer beware and are exempt from this act.

History: En. Sec. 1, Ch. 442, L. 1973.

Title of Act

An act providing for regulation of the various phases of the marketing and distribution of agricultural seeds intended for propagation purpose and restricting the methods of disposition of screenings that contain viable prohibited noxious weed seed; and repealing sections 3-301 through 3-309, R. C. M. 1947.

3-311. Licensing — issuance — application — fee — bonding — insurance. (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production is not required to be licensed under this section.

(2) All licenses are issued on a fiscal year basis to expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. Any nonresident shall file a written power of attorney designating the secretary of state as the agent of such nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, is not required to designate the secretary of state as such agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license costs twenty-five dollars ($25) per year.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license.

History: En. Sec. 2, Ch. 442, L. 1973.

3-312. Screenings—restrictions on movements. All screenings whether from seed processing plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in section 3-802.1(4)(b) shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this act are met.

(2) The department has authority to issue rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

History: En. Sec. 3, Ch. 427, L. 1973.

3-313. Dealer's license — exception — fee—application—violation. (1) No person may distribute seed without obtaining a dealer's license for each place of business from the department. No license is required of a person who distributes seeds only in sealed packages of less than one (1) pound, packed by a licensed seed labeler and bearing his name and address. Each dealer's license costs ten dollars ($10) per year and expires on June 30 of each year. Any licensed processing plant, seed labeler, seed buyer, or public agricultural seed warehouse may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for canceling a license or denial on the part of the department to license a dealer.

History: En. Sec. 4, Ch. 442, L. 1973.

3-314. Violations. The following acts caused within the state of Montana are prohibited:

(1) The failure or refusal to obtain a license as required in sections 2 and 4 [3-311 and 3-313] of this act.

(2) The misbranding or mislabeling of agricultural seeds.

(3) The violation or failure to comply with rules issued under the authority of this act.

History: En. Sec. 5, Ch. 442, L. 1973.

3-315. Rules—promulgated by department. The department is authorized to promulgate necessary rules as authorized by this act. All rules are promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 6, Ch. 442, L. 1973.

3-316. Cancellation of license--misdemeanor—enforcement proceedings. (1) The department may cancel any license issued by it when the provisions of this act have been violated by the holder of the license.

(2) Any person convicted of violating the provisions of this act or rules promulgated under the authority of this act is guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100) or more than three hundred dollars ($300) for the first violation, and not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) for each subsequent violation.

(3) Nothing in this act shall be construed as requiring the department or its representatives to report violations of this act when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under the act notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within thirty (30) days bring action in the district court of the county or any county where the alleged violation occurred, for trial of the issues bearing upon such act.

History: En. Sec. 7, Ch. 442, L. 1973.

3-317. Deposit of funds. All money collected under the provisions of this act shall be deposited to the general fund.

History: En. Sec. 8, Ch. 442, L. 1973.

Repealing Clause

Section 9 of ch. 442, Laws 1973 read "Sections 3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 3-307, 3-308, and 3-309, R. C. M. 1947, are repealed."

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT—INSPECTION AND CERTIFICATION

3-402. (3592.11) **Farm storage commissioner.**

Cross-References

Commissioner's office abolished and functions transferred, sec. 82A-302(3).

CHAPTER 5—PROTEIN TESTING OF GRAIN

Section

3-512. Protein test to be made of all wheat delivered grain warehousemen—manner of making test—result—fee.

3-502. (3592.32) **Administration of act.**

Cross-References

Department abolished and functions transferred, sec. 82A-302 (1).

3-512. (3592.42) **Protein test to be made of all wheat delivered grain warehousemen—manner of making test—result—fee.** Each public grain warehouseman as defined by the laws of the state shall take a sample from each load of wheat delivered to his warehouse and preserve such sample in an air-tight container with the owner's name thereon. As hauling is completed by each owner the several samples taken from all the loads of any one owner shall be mixed thoroughly together, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties or grades shall be segregated and separate containers provided for each. A one-pint portion of the composite sample shall be submitted to the state grain laboratory at Great Falls and the balance shall be held in the owner's container. In the event of dissatisfaction on the part of warehousemen or owner either party shall have the right to a final appeal to the state laboratory.

In case of an appeal a one-pint portion of the remainder of the owner's sample shall again be submitted to the state laboratory with a statement of facts of the appeal and a final test in duplicate shall be made by the laboratory. The certificate of the state laboratory of such test shall be final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee commensurate with the cost of each protein test shall be made, to be deducted and paid at the time of final settlement; provided, however, upon written request of owner, no protein test need be made upon said owner's wheat.

History: En. Sec. 1, Ch. 160, L. 1935; amd. Sec. 1, Ch. 379, L. 1973.

Amendments

The 1973 amendment deleted "Harlowton, or Bozeman" following "Great Falls" in the third sentence of the first paragraph; and substituted "commensurate with the cost of" for "of fifty cents ($0.50), for" and "shall" for "may" in the last sentence of the second paragraph.

CHAPTER 8—AGRICULTURAL SEEDS

Section
3-802.1. Definitions.
3-802.2. Labeling of agricultural seeds.
3-802.3. Labeling of vegetable and flower seeds.
3-803. Exception of seeds, when.
3-804. Penalty.
3-806.1. Testing agent of submitted samples.
3-807. Samples may be sent to the laboratory for testing.
3-808. Certificate of test presumptive evidence.
3-810. Rules and regulations by Montana state university—certification agencies.
3-811. Certification work on self-supporting basis.
3-812. University exempt from liability.
3-813. Withholding certification.
3-814. Unlawful use of certification—penalty.
3-820. Prohibitions.
3-821. Commissioner of agriculture empowered to revise classifications—hearing—order.

3-801, 3-802. (3593, 3594) **Repealed.**

Repeal

Sections 3-801 and 3-802 (Secs. 1, 2, Ch. 12, L. 1913; Sec. 1, Ch. 110, L. 1929; Sec. 1, Ch. 192, L. 1937; Secs. 2, 3, Ch. 88, L. 1939; Secs. 1, 2, Ch. 155, L. 1951; Sec. 1, Ch. 168, L. 1961), relating to the labeling of agricultural seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-802.1. Definitions. Terms used in this act and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term "weed seeds" shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into two (2) groups defined as follows:

1. "Prohibited noxious weed seeds" are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts, and which when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	(Cirsium arvense)
Leafy spurge	(Euphorbia esula)
Hoary cress	(Cardaria draba)
Quackgrass	(Agropyron repens)
Russian knapweed	(Centaurea repens)
Perennial sowthistle	(Sonchus arvensis)
Field bindweed	(Convolvulus arvensis)
Dalmatian toadflax	(Linaria dalmatica)
Halogeton	(Halogeton glomeratus)
Medusa-head wildrye	(Elymus caput-medusae)
Creeping bellflower	(Campanula rapunculoides)
Yellow toadflax	(Linaria vulgaris)

2. "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns and gardens of this state, but can be controlled by good cultural practices.

Restricted noxious weed seeds shall include the seeds of:

Dodder	(Cuscuta spp.)
Blue lettuce	(Lactuca pulchella)
St. Johnswort	(Hypericum perforatum)
Oxeye daisy	(Chrysanthemum leucanthemum)
Spotted knapweed	(Centaurea maculosa)
Hoary alyssum	(Berteroa incana)
Wild oats	(Avent fatua)
Buckhorn plantain	(Plantago lanceolata)
Chickweed	(Stellaria spp.)
Curly dock	(Rumex crispus)

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two or more selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least seventy-five per cent (75%) hybrid seed. Hybrid designations shall be treated as variety names.

(6) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(7) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts.

(8) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(9) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(10) The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade." It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

(11) The term "certifying agency" means:

(a) an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subsection (11)(a) of this section.

(12) The term "protected variety" means a variety for which a certificate has been issued by the U.S. plant variety protection office, or for which an application for protectoin has been filed, granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

History: En. Sec. 1, Ch. 361, L. 1969; amd. Sec. 1, Ch. 390, L. 1973.

Title of Act

An act to provide a uniform agricultural seed law defining seeds and regulating the sale and labeling of seeds by amending section 3-803 and by repealing sections 3-801, 3-802, 3-816, 3-817, 3-818, 3-819, R. C. M. 1947.

Amendments

The 1973 amendment deleted carduus arvensis, white top, perennial peppergrass and cardaria pubescens from the list in subdivision (4) (b) 1; substituted "Centaurea repens" for "Centaurea pieris" in subdivision (4) (b) 1; made minor changes in the names of plants listed in paragraphs 1 and 2 of subdivision (4) (b); deleted "of North America" from the ends of subsections (6) and (7); and added subsections (11) and (12).

3-802.2. Labeling of agricultural seeds. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the first section [3-802.1] of this act, that contains one (1) pound, or more, of agricultural seeds, whether in package or in bulk, shall before offering the seeds for sale affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy and the label shall contain a statement specifying:

(1) A lot number or other distinguishing mark.

(2) Kind. The name of each kind of seed present in excess of five per cent (5%) shall be shown on the label and need not be accompanied by the word "kind." When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of five per cent (5%) and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

Variety. (a) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "Variety Not Stated":

Alfalfa
Barley
Bean, field
Beet, field
Brome, smooth
Clover, crimson
Clover, red
Clover, white
Corn, field
Corn, pop
Fescue, tall
Flax
Millet, foxtail
Oat
Pea, field
Rye
Safflower
Sorghum
Sorghum-Sudan hybrid
Soybean
Sudangrass
Sunflower
Trefoil, Birdsfoot
Wheat, common
Wheat, Durum

(b) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of five per cent (5%) and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(3) If any one kind or kind and variety of seed present in excess of five per cent (5%) is "hybrid" seed, it shall be designated "hybrid" on the label. The percentage that is hybrid shall be at least ninety-five per cent (95%) of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of five per cent (5%) and are named on the label, each that is hybrid shall be designated as hybrid on

the label. Any one kind or kind and variety that has pure seed which is less than ninety-five per cent (95%) but more than seventy-five per cent (75%) hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show (a) the percentage of pure seed that is hybrid seed or (b) a statement such as "Contains from seventy-five per cent (75%) to ninety-five per cent (95%) hybrid seed." No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than seventy-five per cent (75%) hybrid seed.

(4) Origin, state or foreign country if known, of alfalfa, red clover, white clover, native range grasses and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(5) The approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination, and stated as "total germination and hard seed."

(6) The approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds.

(7) The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds.

(8) The approximate total percentage by weight of weed seeds.

(9) The approximate percentage by weight of other crop seeds in agricultural seeds.

(10) The name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds.

(11) The full name and address of the seedsman, importer, dealer or agent, other person or persons, or firm or corporation selling the agricultural seed.

(12) In the case of mixtures of agricultural seeds which contain two (2) or more kinds of seed in excess of five per cent (5%) by weight of each, when sold as mixtures:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight of the total mixture.

(c) Approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds.

(d) Approximate percentage by weight of weed seeds as defined in the first section [3-802.1] of this act.

(e) Approximate percentage by weight of other crop seed in the mixture of agricultural seeds.

(f) The name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in the fourth section [3-820] of this act.

(g) Approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed."

(h) Full name and address of the vendor of the mixture.

(13) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed, quantity of each kind, and each container in a lot shall carry appropriate lot number designation, and accompanied by mechanical analysis for each lot so involved.

History: En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973.

Amendments

The 1973 amendment deleted "in excess of nine (9) weed seeds" before "per pound" in subsection (10) and subdivision (12) (f) and added subsection (13).

3-802.3. Labeling of vegetable and flower seeds. Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(1) Each container of one (1) pound or less:

(a) The commonly accepted name of the kind or the kind and variety of the seed.

(b) The name and address of the person who labeled the seed or who sells the seed within this state.

(c) The name and number per pound of each kind of restricted noxious weed seeds as prescribed in section 4 [3-820] of this act.

(d) In the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

1. The percentage of germination.

2. The percentage of hard seed, if more than one per cent (1%).

3. The month and year the test to determine the data required by this section was completed.

4. The words "below standard germination" in not less than eight (8) point boldface type.

(2) Each container of more than one (1) pound:

(a) The name of the kind and variety of the contents.

(b) The lot numbers or other lot identification.

(c) The name and number per pound of each kind of restricted noxious weed seed as prescribed in section 4 [3-820] of this act.

(d) The percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act.

(e) The percentage of hard seed, if more than one per cent (1%).

(f) The month and year the test to determine the data required by this section was completed.

(g) The name and address of the person who labeled the seed or who sells the seed within this state.

History: En. Sec. 3, Ch. 361, L. 1969.

Compiler's Notes

The Federal Seed Act is compiled in the United States Code as Tit. 7, sec. 1551 et seq.

3-803. (3595) **Exception of seeds, when.** Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969.

Amendments

The 1969 amendment deleted former subdivision (4) exempting seeds "sold by a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor."

Repealing Clause

Section 7 of Ch. 361, Laws 1969 read "Sections 3-801, 3-802, 3-816, 3-817, 3-818 and 3-819 R. C. M. 1947, are repealed."

3-804. (3596) **Penalty.** Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100), nor more than three hundred dollars ($300) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) and costs of such prosecution.

History: En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R. C. M. 1921; amd. Sec. 2, Ch. 110, L. 1929; amd. Sec. 5, Ch. 88, L. 1939; amd. Sec. 3, Ch. 390, L. 1973.

Amendments

The 1973 amendment increased the fines from $25.00 to $100.00 to from $100 to $300 for a first conviction and from $50 to $500 to from $500 to $1,000 for subsequent convictions.

3-806. (3598) **Repealed.**

Repeal

Section 3-806 (Sec. 6, Ch. 12, L. 1913; Sec. 7, Ch. 88, L. 1939), relating to employment and payment of seed inspection agents, was repealed by Sec. 13, Ch. 390, Laws 1973. For new law see sec. 3-806.1.

3-806.1. Testing agent of submitted samples. The grain and seed laboratory shall analyze any seed samples taken from seed lots offered for sale in the state and submitted by the department.

History: En. 3-806.1 by Sec. 4, Ch. 390, L. 1973.

Title of Act

An act defining certifying agency and protected variety; providing for labeling of seeds; providing a penalty; providing for testing of seed samples; providing for additional prohibitions; amending sections 3-802.1, 3-802.2, 3-804, 3-807, 3-808, 3-810 through 3-814 and 3-820, R. C. M. 1947; and repealing section 3-806, R. C. M. 1947.

3-807. (3599) **Samples may be sent to the laboratory for testing.** Any citizen of this state may request the grain and seed laboratory to examine, analyze and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates determined jointly by the department and the director of the grain and seed laboratory. All fees collected by the grain and seed laboratory shall be used to defray the expenses incurred by the laboratory under this act.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R. C. M. 1921; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951; amd. Sec. 5, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted references to "the grain and seed laboratory" for references to "the Montana grain inspection laboratory of the Montana experiment station"; substituted "department" near the end of the first sentence for a reference to the commissioner of agriculture and the director of the experiment station; and made numerous minor changes in phraseology.

3-808. (3600) **Certificate of test presumptive evidence.** The certificate of the grain and seed laboratory, giving results of any examinations, analyses or tests of any seed samples made under the authority of the department is presumptive evidence of the correctness of the facts stated in it.

History: En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R. C. M. 1921; amd. Sec. 9, Ch. 88, L. 1939; amd. Sec. 6, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "grain and seed laboratory" for a reference to the grain inspection laboratory of the experiment station; substituted "department" for a reference to the commissioner of agriculture; and made minor changes in phraseology.

3-810. Rules and regulations by Montana state university—certification agencies. Every person, firm, association or corporation subject to the provisions of this act shall observe, perform or comply with all rules and standards for seed certification established or specified by Montana state university, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification, within the provisions of this act shall be made or authorized except by or through said university.

History: En. Sec. 2, Ch. 11, L. 1951; amd. Sec. 7, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "and standards for seed certification" in the first sentence for "regulations and requirements fixed"; and substituted "university" for "college" throughout the section.

3-811. Certification work on self-supporting basis. Certification work, whether conducted by said university or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951; amd. Sec. 8, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "university" for "college."

3-812. University exempt from liability. The said university shall not be financially responsible for debts incurred by damages, or contracts broken by certifying agencies in conducting certification work.

History: En. Sec. 4, Ch. 11, L. 1951; amd. Sec. 9, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "university" for "college."

3-813. Withholding certification. The said university or its designated agency or agencies, may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of this act, including standards, rules and regulations laid down by the said university or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951; amd. Sec. 10, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "university" for "college."

3-814. Unlawful use of certification—penalty. It shall be unlawful for any person, firm, association or corporation to issue, make, use or circulate any certification as defined in this act, without the authority and approval of the said university, or its duly authorized agency, as herein provided. Every person, firm, association, or corporation who shall violate any of the provisions of this act pertaining to certification shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars ($100.00) nor exceeding five hundred dollars ($500.00) for each offense.

History: En. Sec. 6, Ch. 11, L. 1951; amd. Sec. 11, Ch. 390, L. 1973.

Amendments

The 1973 amendment substituted "university" for "college" in the first sentence.

3-816 to 3-819. Repealed.

Repeal

Sections 3-816 to 3-819 (Secs. 1 to 4, Ch. 196, L. 1961), relating to the labeling of vegetable and flower seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-820. Prohibitions. No person, firm, corporation, copartnership or association shall sell or transport for use in planting in the state of Montana any agricultural, vegetable or flower seed that:

(1) Contains prohibited noxious weed seeds.

(2) Contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Species		Number allowed per pound
Dodder	(Cuscuta spp.)	18
Blue lettuce	(Lactuca pulchella)	27
St. Johnswort	(Hypericum perforatum)	27
Oxeye daisy	(Chrysanthemum leucanthemum)	90
Spotted knapweed	(Centaurea maculosa)	18
Hoary alyssum	(Berteroa incana)	9
Wild oats	(Avena fatua)	45
Buckhorn plantain	(Plantago lanceolata)	90
Chickweed	(Stellaria spp.)	9
Curly dock	(Rumex crispus)	45

(3) Contains in excess of two per cent (2%) or more of weed seed.

(4) Is offered or exposed for sale more than nine (9) calendar months from the last day of the month in which the germination test was completed. This nine (9) month limitation shall not apply when seed is packaged in hermetically sealed containers within twelve (12) months after harvest. The container must be conspicuously labeled in not less than eight (8) point type to indicate:

(a) That the container is hermetically sealed.

(b) That the seed has been preconditioned as to moisture content.

(c) That the germination test is valid for a period not to exceed eighteen (18) months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed thirty-six (36) months for seeds offered for sale at retail.

(d) That the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1963, with subsequent revisions.

(5) Is represented in any manner to be for lawn seeding purposes, unless it contains at least fifty per cent (50%) pure seed of perennial fine-textured species which shall be specified by rules and regulations pursuant to this act. However, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-textured grasses may be sold. When these grass mixtures are contained in packages of twenty-five (25) pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-textured varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (Poa compressa), Annual Bluegrass (Poa annua) and Rough Bluegrass (Poa trivialis).

(b) Chewings Red Fescue and all improved varieties.

(c) Creeping Red Fescue and all improved varieties.

(d) Bentgrass—all varieties.

(e) Fine-textured Ryegrasses.

(6) The labeling, advertising or other representation subject to this act represents the seed to be certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate) or variety; and

(b) that the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety.

(7) Is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), without the authority of the owner of the variety; or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with approval of, the owner of the variety.

History: En. Sec. 4, Ch. 361, L. 1969; amd. Sec. 12, Ch. 390, L. 1973.

Amendments

The 1973 amendment made minor changes in the common names of plants listed in subdivision (2); substituted "fine-textured" for "fine-leaf" throughout subdivision (5); added Rough Bluegrass (Poa annua) to subdivision (5) (a); and added subdivisions (6) and (7).

Repealing Clause

Section 13 of Ch. 313, Laws 1973 read "Section 3-806, R. C. M. 1947, is repealed."

3-821. Commissioner of agriculture empowered to revise classifications —hearing—order. The commissioner of agriculture may, with the written approval of the director of the Montana experiment station recorded prior to or within ten (10) days after the public hearing, prescribed herein, add to or remove from, revise, or modify the foregoing groups and classifications of noxious weed seeds, and the noxious weed seeds within any groups or classifications, as the circumstances may require in aid of the purpose of this act to prevent or diminish the distribution and occurrence of such noxious weed seeds within the state of Montana, but no additions, removals or modifications shall be made without a full public hearing, on adequate and informative written or published notice plainly stating the exact additions, removals or modifications proposed to be made, and said notice shall be given by the commissioner at least thirty (30) days before the day set for said hearing and shall state the time and place of said hearing, and said notice shall be published in three (3) newspapers of general circulation in the state, and such notice shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. If any revision or modification is determined to be made as a result of any such hearing, the same shall be promulgated by a written order of the commissioner, countersigned "approved" by the director of the Montana experiment station, plainly stating the revisions or modifications and the effective date or dates thereof, and any and all qualifications, exceptions or conditions connected with such revisions or modifications.

History: En. Sec. 5, Ch. 361, L. 1969.

CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

3-1101. (3608) **Division of horticulture—duties.**

Cross-References

Department abolished and functions transferred, sec. 82A-302 (1).

CHAPTER 14—STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

Section
3-1401. Standard grades for Montana farm products.
3-1402. Definitions.
3-1403. Commissioner to establish standard grades—notice required.
3-1404. Grading and branding of products required—labeling of culls.
3-1405. Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.
3-1406. Inspection of condition of products in storage or transit.
3-1407. Enforcement of act.
3-1409. Intent and purpose of act.
3-1410. Violation of provisions—penalty.

3-1401. (3633.1) **Standard grades for Montana farm products.** The standard grades for Montana farm products and other farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1933; amd. Sec. 1, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "and other farm products" after "Montana farm products."

3-1402. (3633.2) **Definitions.** The following terms, whenever used in this act, or in rules and regulations later promulgated by the commissioner of agriculture, shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The term "Montana farm products" shall mean all products of the farm grown commercially in Montana intended for table use such as potatoes, cherries, and dry beans. The term "Montana farm products" shall not be limited to those farm products grown in Montana but shall include like products grown outside this state.

(c) The term "other farm products" shall mean all farm products which are not normally grown commercially in Montana such as grapefruit and oranges; but in either subsection (b) or (c) these terms shall not include livestock and its by-products; poultry and its products; apiary products; dairy products; grain and apples.

(d) "Container" or "package" shall mean cloth or fibre sacks, barrel, box, crate, carton, hamper or baskets, such as are customarily used for the shipment of Montana farm products and other farm products.

(e) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

History: En. Sec. 2, Ch. 165, L. 1933; amd. Sec. 2, Ch. 79, L. 1969.

Amendments

The 1969 amendment rewrote subsection (b), changing the term defined from "farm products" to "Montana farm products"; inserted a new subsection (c), redesignated former subsections (c) and (d) as new subsections (d) and (e); inserted "Montana" before "farm products" in subsection (d) and added "and other farm products" at the end of that subsection.

3-1403. (3633.3) **Commissioner to establish standard grades — notice required.** (a) The commissioner of agriculture shall at once establish in the manner provided by this act, United States standard grades on potatoes, dry beans, cherries and shall thereafter, as soon as any Montana farm product or other farm product shall have reached a volume rendering it of market importance, establish United States grades on same.

(b) The commissioner of agriculture shall establish grades and designate Montana farm products and other farm products by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933; amd. Sec. 3, Ch. 79, L. 1969.

Amendments

The 1969 amendment, in subsection (a), deleted provisions for standard grades for onion, head lettuce and cabbage, inserted "dry" before "beans" and "cherries" after "beans," and substituted "Montana farm product or other farm product" for "agricultural product"; in subsection (b), inserted "and designate Montana farm products and other farm products" after "establish grades."

3-1404. (3633.4) **Grading and branding of products required—labeling of culls.** (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or consignment in interstate or intrastate commerce,

(1) Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

(2) Other farm products which includes products arriving or found in Montana in containers not graded and branded must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.

(b) Provided that Montana farm products and other farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded "For Seed Purposes."

(e) Provided further that United States commercial grade shall be a standard grade in the state of Montana.

(f) Provided further that oranges labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges.

History: En. Sec 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969.

Amendments

The 1969 amendment designated the latter portion of subsection (a) as subdivision (1), inserted "Montana farm products and other" before "farm products prepared for market," added subdivision (2); inserted "Montana farm products and other" before "farm products" in subsections (b) and (d) and added subsection (f).

3-1405. (3633.5) **Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.** (a) It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled or stenciled before being moved from the premises of the person or persons responsible for the grading and packing, the name of the grade, when applicable together with the true net contents expressed in weight.

(b) When tags are used, United States No. 1 grade shall be declared on a white tag, and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two (2) cards not less than four by six inches (4″ x 6″) in size, placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are deemed for sale when the containers are packed for delivery or transit, or when same are exposed for sale, or when same are in process of delivery or transit, or located at a depot, station, boat dock, or any place where farm products, or other products are held for storage, or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933; amd. Sec. 5, Ch. 79, L. 1969.

Amendments

The 1969 amendment, in subsection (a), inserted "Montana farm products and other" before "farm products" and "when applicable" after "the name of the grade"; and in subsection (b), inserted "if applicable" after "the name of the grade."

3-1406. (3633.6) **Inspection of condition of products in storage or transit.** Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay, but otherwise up to the grade, shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933; amd. Sec. 6, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" at the beginning of this section.

3-1407. (3633.7) **Enforcement of act.** The commissioner of agriculture is hereby charged with the enforcement of this act and is given power unto himself and to his duly appointed representatives to enter into and upon the premises where Montana farm products and other farm products are graded or packed or stored, to inspect the same as to grade, pack and condition.

History: En. Sec. 7, Ch. 165, L. 1933; amd. Sec. 7, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products."

3-1409. (3633.9) **Intent and purpose of act.** The intent and purpose of this act is to regulate the sale of Montana farm products and other farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the Montana farm products and other farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933; amd. Sec. 8, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products" in two instances in this section.

3-1410. (3633.10) **Violation of provisions—penalty.** Whoever violates this act by not grading Montana farm products and other farm products as herein required, or by not tagging or branding containers as herein required, or by removing or altering any tag or brands placed upon or attached to any containers as in this act required, unless ordered to do so by the commissioner of agriculture, or his duly appointed representative or representatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars ($10.00), nor more than one hundred dollars ($100.00), or by imprisonment in the county jail not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment in accordance with the discretion of the court.

History: En. Sec. 10, Ch. 165, L. 1933; amd. Sec. 9, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products."

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section
3-1503. Examination of witnesses—inspection of factories, etc.

3-1503. (3637) **Examination of witnesses—inspection of factories, etc.** In discharging the duties imposed upon the division of labor and industry, the commissioner of labor and industry shall have power to administer oaths, to examine witnesses under oath, to take depositions or cause same to be taken, to deputize any citizen age eighteen (18) or older to serve subpoenas upon witnesses, and to issue subpoenas for the attendance of wit-

nesses before him in the same manner as for attendance before district courts. The commissioner of labor and industry shall likewise have the authority to inspect any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment, and any person who shall refuse to the commissioner admission to any of the industrial establishments herein enumerated when admission is requested for the purpose of inspection, or who shall, when requested by the commissioner, willfully neglect or refuse to furnish to him any statistics or other information which may be in the possession or under the control of such person, or who shall refuse to obey any subpoena issued by the commissioner, shall be deemed guilty of a misdemeanor and be punished accordingly. Nothing herein contained shall in any manner confer upon the commissioner of labor and industry the authority to interfere in any manner with the conduct of the matters under the control of the industrial accident board, nor shall said commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs of said industrial accident board, nor with the enforcement of the safety provisions of the Workmen's Compensation Act.

History: En. Sec. 58, Ch. 216, L. 1921; re-en. Sec. 3637, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1973.

Amendments

The 1973 amendment deleted "male" before "citizen" in the first sentence; and substituted "age eighteen (18) or older" for "over the age of twenty-one years" after "citizen" in the first sentence.

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

Section
3-1729. Assessment to fund educational and experimental programs—collection.
3-1730. Allocation of assessments.
3-1731. Educational and experimental programs.
3-1732. Advisory committee—appointment and composition.
3-1733. Term of office.
3-1734. Meetings and functions of advisory committee.

3-1729. Assessment to fund educational and experimental programs—collection. Moneys to fund this act will be produced by an assessment of thirty-five cents ($0.35) per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in sections 3-1717 and 3-1721, R.C.M. 1947, and shall be collected from the "registrant" of fertilizer.

History: En. Sec. 1, Ch. 397, L. 1971.

Title of Act

An act providing for an assessment on fertilizer to produce funds for the Montana co-operative extension service and the Montana agricultural experiment station of Montana state university, Bozeman, for a statewide fertilizer and related soil management program of education and research correlated with soil testing; providing an effective date; and providing an expiration date.

3-1730. Allocation of assessments. The assessment shall be collected by the Montana department of agriculture and up to one per cent (1%) shall be retained by the department of agriculture for costs of collection and the balance will be deposited in an earmarked revenue fund with fifty per cent (50%) for use by the Montana co-operative extension service and fifty per cent (50%) for use by the Montana agricultural experiment sta-

tion of Montana state university, Bozeman, in programs recommended by the advisory committee, established in section 4 [3-1732] of this act, and approved by the respective directors.

History: En. Sec. 2, Ch. 397, L. 1971.

3-1731. Educational and experimental programs. The moneys provided by this act shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environment protection on the many varied soil and climatic conditions of the state.

History: En. Sec. 3, Ch. 397, L. 1971.

3-1732. Advisory committee — appointment and composition. The advisory committee shall represent fertilizer users of Montana and shall be appointed by the dean of agriculture, Montana state university, with the approval of the following: chairman of the Montana house of representatives agriculture and irrigation committee; chairman of the Montana senate agriculture committee; chairman of the Montana plant food association or its successor organization; director of Montana co-operative extension service; and director of Montana agricultural experiment section.

History: En. Sec. 4, Ch. 397, L. 1971.

3-1733. Term of office. The advisory committee members shall be appointed for five (5) year terms; however, first appointments shall be for one, two, three, four and five-year duration for the five (5) members, respectively, with an appointment made each year thereafter. No one shall serve more than seven (7) consecutive years.

History: En. Sec. 5, Ch. 397, L. 1971.

3-1734. Meetings and functions of advisory committee. The advisory committee shall meet a minimum of once each year with the directors of Montana co-operative extension service and agricultural experiment station to perform the following functions: (1) Review the educational and experimental programs financed by this act.

(2) Recommend needed programs and/or program adjustments.

(3) Report to the Montana house and/or senate agriculture committees as requested.

History: En. Sec. 6, Ch. 397, L. 1971.

Effective Date

Section 7 of Ch. 397, Laws 1971 read "This act shall become effective on March 15, 1971 and will expire on March 15, 1975."

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

Section
3-1902. Definitions and specifications.

3-1902. Definitions and specifications. The following definitions and specifications are hereby adopted and made legal:

(1) to (3) * * * [Same as parent volume.]

(4) Foreign Material Other Than Dockage—Foreign material other than dockage shall include all matter other than tame cultivated mustard seed, which is not separated in the proper determination of dockage; however, rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed, and thus are not readily identified, and the total of which is not in excess of two and one-half per cent (2½%), shall not be considered foreign material, and shall not be considered in grading said classes of mustard seed.

Basis of Determination: Each determination of dockage, temperature, odor and live weevil or other insects injurious to stored mustard seed, shall be upon the basis of the seed as a whole. All other determinations shall be upon the basis of the seed when free from dockage.

(5) * * * [Same as parent volume.]

(6) Percentages of Moisture—Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(7) Percentage of Dockage—Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(8) and (9) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971.

Amendments

The 1971 amendment added to the first paragraph of subdivision (4) the language following the semicolon therein; substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Brown-Duval Moisture Tester and the method of use thereof described in U. S. D. A. Bulletin No. 1375 for testing flaxseed" in subdivision (6); and substituted "use of the equipment and procedure prescribed by the Montana department of agriculture" for "the Farrell Clipper Tester and Cleaner or any other cleaning device that will give equivalent results" in subdivision (7).

CHAPTER 20—COMMERCIAL FEEDS—REGULATION

Section
3-2025. Definitions.
3-2026. Enforcement official.
3-2027. Permits—registration—fees—refusal and cancellation.
3-2028. Labeling.
3-2029. Misbranded feed.
3-2030. Adulterated feed.
3-2031. Prohibitions.
3-2032. Inspection fees—filing of annual statement.
3-2033. Deposit of fees.
3-2034. Rules—adoption by department.
3-2035. Enforcement—inspection—notice—sampling and analysis.
3-2036. Enforcement—embargo order—condemnation.
3-2037. Misdemeanor—injunction—appeal.
3-2038. Co-operation with other agencies.
3-2039. Publications.

3-2012 to 3-2024. Repealed.

Repeal

Sections 3-2012 to 3-2024 (Secs. 1 to 13, Ch. 127, L. 1963; Secs. 7, 8, Ch. 248, L. 1965), relating to commercial feeds, were repealed by Sec. 17, Ch. 356, Laws 1973. For new law see secs. 3-2025 to 3-2039.

3-2025. Definitions. Unless the context requires otherwise, in this act:

(1) "Person" means an individual, partnership, corporation and association.

(2) "Distribute" means to offer for sale, sell, exchange or barter commercial feed.

(3) "Distributor" means a person who distributes.

(4) "Commercial feed" means all materials except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of section 6 (1) [3-2030 (1)], which are distributed for use as feed or for mixing in feed. However, the department by rule may exempt from this definition, or from specific provisions of this act, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when those commodities, compounds or subtances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 6 (1) [3-2030(1)] of this act.

(5) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(6) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(7) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or function of the animal body.

(8) "Custom-mixed feed" means commercial feed which consists of a mixture of either commercial feeds or feed ingredients or both of them, each batch of which is manufactured according to specifications mutually agreed to by the purchaser and the manufacturer. A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.

(9) "Manufacture" means to grind, mix, blend or further process a commercial feed.

(10) "Brand name" means any word, name, symbol or device, or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(11) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(12) "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(13) "Labeling" means all labels and other written, printed or graphic matter upon a commercial feed, any of its containers, its wrapper or accompanying the commercial feed.

(14) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(15) "Per cent" or "percentages" means percentages by weights.

(16) "Official sample" means a sample of feed taken by the department in accordance with the provisions of section 11 (3), (5) or (6) [3-2035 (3), (5) or (6)] of this act.

(17) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(18) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(20) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

History: En. Sec. 1, Ch. 356, L. 1973.

Title of Act

An act to regulate the manufacture, distribution and use of commercial feed in the state of Montana by requiring registration with fee of products and facilities; setting inspection fees and establishing the method of collection; providing an effective date; and repealing sections 3-2012 through 3-2024, R. C. M. 1947.

3-2026. Enforcement official. This act shall be administered by the Montana department of agriculture.

History: En. Sec. 2, Ch. 356, L. 1973.

3-2027. Permits—registration—fees—refusal and cancellation. (1) No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. The applicant shall pay a fee of twenty-five dollars ($25) per calendar year for each facility, distribution point or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

(2) No person may distribute, in this state, a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration shall be accompanied by a fee of five dollars ($5) for each product other than a pet food or specialty pet food and a fee of twenty-five dollars ($25) each for each pet food or specialty pet food. Upon approval by the department, a certificate of registration shall be continuous, provided that the annual fee is paid not later than December 31 of each year.

(3) The department may refuse registration of any commercial feed not in compliance with this act and may cancel any registration subsequently found not to be in compliance with this act. No registration may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this act.

History: En. Sec. 3, Ch. 356, L. 1973.

3-2028. Labeling. (1) A commercial feed, except a custom-mixed feed, shall be accompanied by a label containing:

(a) the net weight;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by the association of official analytical chemists;

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or it may exempt commercial feeds, or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers;

(e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use;

(g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A custom-mixed feed shall be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all custom-mixed feed containing drugs. The department may by rule require directions for the use of other custom-mixed feeds when necessary for their safe and effective use;

(f) precautionary statements which the department by rule determines are necessary for safe and effective use of the custom-mixed feeds.

History: En. Sec. 4, Ch. 356, L. 1973.

3-2029. Misbranded feed. A commercial feed is misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed;

(3) it is not labeled as required in section 4 [3-2028] of this act;

(4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;

(5) any word, statement, or other information required by this act to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs or devices in the label-

ing) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 5, Ch. 356, L. 1973.

3-2030. Adulterated feed. (1) A commercial feed is adulterated if:

(a) it contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the commercial feed shall not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;

(b) it contains any added poisonous, deleterious or nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive);

(c) it is, or it contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(d) it is a raw agricultural commodity and it contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act. However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

(e) it is, or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(2) Any valuable constituents have been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) Its composition or quality falls below or differs from that stated on its label.

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this act as to safety and has the identity and strength and meets the quality and purity characteristics which it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this state.

(5) It contains viable weed seeds in amounts exceeding the limits which the department established by rule.

History: En. Sec. 6, Ch. 356, L. 1973.

3-2031. Prohibitions. No person may:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls which are adulterated within the meaning of section 6 (1) [3-2030 (1)] of this act;

(4) remove or dispose of a commercial feed in violation of an order under section 12 [3-2036] of this act;

(5) fail to register or obtain a permit in accordance with section 3 [3-2027] of this act;

(6) violate section 13 (6) [3-2037 (6)] of this act;

(7) fail to pay inspection fees and file reports as required by section 8 [3-2032] of this act.

History: En. Sec. 7, Ch. 356, L. 1973.

3-2032. Inspection fees—filing of annual statement. (1) An inspection fee shall be paid on all commercial feeds, except "pet foods" and "specialty pet foods" distributed in this state as follows:

(a) The inspection fee shall be set at ten cents ($.10) per ton. However, after May 1975 the department may adjust the fee by rule to adequately fund the administration of this act. Adjustments shall be made only after holding a public hearing on the proposed changes as required in section 10 [3-2034] of this act and shall remain within the limits of five cents ($.05) to twenty-five cents ($.25) per ton. The effective date of any such rule adjusting fees will be January 1 of the calendar year following the issuance of such rule. All permit holders are to be notified immediately of any changes in fees.

(b) The feed manufacturer shall have primary responsibility for paying inspection fees; however, the distributor shall be held responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees shall be paid on each commercial feed including feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot, poultry, swine or dairy operation shall not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site but he will be responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in section 3 (1) [3-2027 (1)] of this act shall:

(a) file, not later than February 28 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31); and upon filing such a statement shall pay the inspection fee at the

rate stated in subsection (1) of this section. Inspection fees which have not been remitted to the department within fifteen (15) days following the due date shall have a penalty fee of ten per cent (10%) with a minimum of ten dollars ($10) added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this act;

(b) keep those records which are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage;

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit.

History: En. Sec. 8, Ch. 356, L. 1973.

3-2033. Deposit of fees. All fees collected for permits, registration and inspection shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this act, including the cost of equipment and facilities and the cost of inspecting, analyzing and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods, means of evaluating the value or the potential toxic qualities of a feed.

History: En. Sec. 9, Ch. 356, L. 1973.

3-2034. Rules—adoption by department. (1) The department may adopt those rules for commercial feeds and pet foods which are specifically authorized in this act and those other reasonable rules necessary for the efficient enforcement of this act. In the interest of uniformity the department shall adopt unless it determines that they are inconsistent with this act or are not appropriate to conditions which exist in this state:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in this official publication of that organization and,

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this act to adopt that rule.

(2) In adopting rules the department will follow procedures prescribed in the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 10, Ch. 356, L. 1973.

3-2035. Enforcement—inspection—notice—sampling and analysis. (1) To enforce this act, the department, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge may enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed or held, or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishments or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling found in them. The inspec-

tion may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under section 6 (4) [3-2030 (4)] of this act.

(2) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give the owner, operator or agent in charge a receipt describing the sample obtained.

(4) If the owner of a factory, warehouse or establishment described in subsection (1), or his agent, refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.

(5) To enforce this act, the department may enter upon any public or private premises including any vehicle of transport during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists or with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following receipt of the analysis the department shall furnish the registrant a portion of the sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in subsection (16) of section 1 [3-2025 (16)] and obtained and analyzed as provided for in subsections (3), (5) and (6) of section 11 [3-2035 (3), (5) and (6)] of this act.

(9) All chemical analyses shall be performed co-operatively by the department and the Montana agricultural experiment station at Montana state university.

History: En. Sec. 11, Ch. 356, L. 1973.

3-2036. Enforcement—embargo order—condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed is in violation of this act or a rule adopted by the department, it may issue and enforce a written or printed embargo order, requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this act and the rules of the department have been complied with. If compliance is not obtained within thirty (30) days, the

department may begin or upon the request of the registrant or the person holding the commercial feed shall begin, proceedings for condemnation.

(2) Commercial feed not in compliance with this act or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this act and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this act.

History: En. Sec. 12, Ch. 356, L. 1973.

3-2037. Misdemeanor—injunction—appeal. (1) A person who violates this act or who obstructs, prevents or attempts to obstruct or prevent the department in the performance of its duty under this act, is guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100) or more than three hundred dollars ($300) for the first violation, and not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for a subsequent violation.

(2) Nothing in this act requires the department to prosecute, begin seizure proceedings or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(3) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present his view to the department.

(4) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating this act or any rule adopted under this act notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(5) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may within thirty (30) days seek judicial review in the district court where the person resides or has his place of business.

(6) A person who uses to his own advantage, or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding, any information acquired under this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be fined not more than three hundred dollars ($300), or imprisoned for not more than one (1) year, or both. However, the department may exchange information of a regulatory nature with the proper officials of the United States government, or of other states, who are similarly prohibited by law from revealing that information.

History: En. Sec. 13, Ch. 356, L. 1973.

3-2038. Co-operation with other agencies. The department may co-operate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out this act.

History: En. Sec. 14, Ch. 356, L. 1973.

3-2039. Publications. The department shall publish at least annually in a form it considers proper, information concerning the sale of commercial feed, data on production and use and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed shall not disclose the operations of any person.

History: En. Sec. 15, Ch. 356, L. 1973.

Separability Clause

Section 16 of Ch. 356, Laws 1973 read "If any clause, sentence, paragraph or part of this act is for any reason judged invalid by a court of competent jurisdiction, that judgment does not affect, impair or invalidate the remainder thereof but is confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which the judgment is rendered."

Repealing Clause

Section 17 of Ch. 356, Laws 1973 read "Sections 3-2012 through 3-2024, R. C. M. 1947, are repealed."

Effective Date

Section 18 of Ch. 356, Laws 1973 read "This act shall take effect and be in full force from and after the first day of January 1, 1974, except the department may and is hereby directed to adopt necessary rules as authorized in section 10 of this act as soon as practical so they can become effective January 1, 1974."

CHAPTER 22—POULTRY IMPROVEMENT

(Repealed—Section 6, Chapter 46, Laws of 1957; Section 1, Chapter 138, Laws of 1973)

3-2201, 3-2201.1, 3-2202 to 3-2205. Repealed.

Repeal

Sections 3-2201, 3-2201.1, 3-2202 to 3-2205 (Secs. 1 to 5, Ch. 141, L. 1945; Secs. 1 to 3, Ch. 46, L. 1957; Secs. 1 to 5, 10, Ch. 59, L. 1961), regulating the poultry industry, were repealed by Sec. 1, Ch. 138, Laws 1973.

3-2207. Repealed.

Repeal

Section 3-2207 (Sec. 7, Ch. 141, L. 1945; Sec. 6, Ch. 59, L. 1961; Sec. 41, Ch. 147, L. 1963), relating to disposition of fees under the poultry improvement act, was repealed by Sec. 1, Ch. 138, Laws 1973.

3-2209 to 3-2212. Repealed.

Repeal

Sections 3-2209 to 3-2212 (Secs. 9 to 12, Ch. 141, L. 1945; Secs. 4, 5, Ch. 46, L. 1957; Secs. 7 to 9, Ch. 59, L. 1961), relating to labeling and advertising in the poultry industry, and to violations of the poultry improvement act, were repealed by Sec. 1, Ch. 138, Laws 1973.

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

Section
3-2301. Egg dealer's license—fee.
3-2306. Egg—when defined as unfit for human food.

3-2308. Notice to purchaser of grade of eggs.
3-2310. Rules and regulations for enforcement of act to be made by commissioner.
3-2315. Disposal of license fees.

3-2301. (2634.1) **Egg dealer's license—fee.** Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell at retail more than an average of 25 cases of eggs per month for any one year, other than those produced by fowl owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be five dollars ($5.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be fifty dollars ($50.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. 1969.

Amendments

The 1969 amendment inserted "at retail" after "who do not buy and sell" in the first sentence and raised the license fee for dealers buying eggs for resale at wholesale from $20.00 to $50.00.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

3-2306. (2634.6) **Egg—when defined as unfit for human food.** Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled," or "white rot" means an egg that is putrid or rotten.

(b) to (i) * * * [Same as parent volume.]

(j) An egg that is smashed or broken so that the contents are leaking.

(k) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug and Cosmetic Act, and rules and regulations promulgated under authority of this act.

History: En. Sec. 6, Ch. 189, L. 1931; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969.

Compiler's Notes

The definition of adulterated food in the Federal Food, Drug and Cosmetic Act is contained in United States Code, Tit. 21, sec. 342.

Subdivision (a) is reprinted to correct an error in the parent volume.

Amendments

The 1969 amendment added subdivisions (j) and (k).

3-2307. (2634.7) **Repealed.**

Repeal

Section 3-2307 (Sec. 7, Ch. 189, L. 1931; Sec. 4, Ch. 151, L. 1939; Sec. 3, Ch. 176, L. 1969), relating to labeling of imported eggs, was repealed by Sec. 3, Ch. 71, Laws 1973.

3-2308. (2634.8) **Notice to purchaser of grade of eggs.** It shall be unlawful for any person to sell, offer or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality and size or weight of such eggs, according to the standards pre-

scribed by the department of livestock, by stamping or printing on the container of any such eggs, such grade or quality and size or weight, and in the case said eggs are offered for sale in bulk, without also displaying in a conspicuous place at the point where such eggs are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving such grade, quality, size and weight and date of grading. Provided, that this act shall not affect the sale of eggs by the producers when the consumer purchased said eggs at the place of production.

History: En. Sec. 8, Ch. 189, L. 1931; amd. Sec. 5, Ch. 151, L. 1939; amd. Sec. 1, Ch. 71, L. 1973.

Amendments

The 1973 amendment substituted "department of livestock" for "commissioner of agriculture" in the first sentence; and deleted "without placing a Montana State egg seal upon each carton, bag or other container in which eggs are sold, delivered or offered for sale at retail to the consumer" from the end of the first sentence.

3-2310. (2634.10) **Rules and regulations for enforcement of act to be made by commissioner.** It shall be the duty of the commissioner of agriculture to enforce the provisions of this act and to make such rules and regulations as may be necessary for the enforcement of this act, including the processing, handling and marketing of egg products whether shell, liquid, frozen or dried.

History: En. Sec. 10, Ch. 189, L. 1931; amd. Sec. 4, Ch. 176, L. 1969.

Amendments

The 1969 amendment added "including the processing * * * or dried" at the end of the section.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

3-2312. (2634.12) **Repealed.**

Repeal

Section 3-2312 (Sec. 8, Ch. 151, L. 1939; Sec. 1, Ch. 13, L. 1957; Sec. 6, Ch. 121, L. 1965), requiring the commissioner of agriculture to provide a Montana egg seal, was repealed by Sec. 3, Ch. 71, Laws 1973.

3-2315. Disposal of license fees. All funds derived from the licenses herein provided shall be paid to the state treasurer to be credited to the general fund.

History: En. Sec. 11, Ch. 151, L. 1939; amd. Sec. 43, Ch. 147, L. 1963; amd. Sec. 2, Ch. 71, L. 1973.

Amendments

The 1973 amendment deleted "and from the sale of the Montana state egg seal" before "shall be paid"; and made a minor change in phraseology.

Repealing Clause

Section 3 of Ch. 71, Laws 1973 read "Section 3-2307 and 3-2312, R. C. M. 1947, are repealed."

CHAPTER 24—MANUFACTURED DAIRY PRODUCTS

Section
3-2488. General authority of commissioner—committee to assist in first regulations.
3-2489. Promulgation of minimum standards for milk or cream.
3-2490. Licensing of persons engaged in production of milk.
3-2491. Hearings—suspension, revocation or denial of license.
3-2492. Required records and reports—examination.
3-2493. Enforcement of laws and regulations—violation as misdemeanor.
3-2494. Separability provision.
3-2495. New or amended rules or regulations—mailing—hearing—judicial review.

3-2496. Investigation of complaints and violations—injunction.
3-2497. Definitions.
3-2498. Tests and analyses—admissibility as evidence.
3-2499. Taking and preservation of samples.
3-24-100. License required for milk or cream route.
3-24-101. License—privilege not a right—expiration—renewal—nontransferability.
3-24-102. Examination and licensing of persons engaged in testing.
3-24-103. Sampling and testing by department.
3-24-104. Grading of milk—condemnation of unsafe milk.
3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license.
3-24-106. Renewal, suspension or revocation of license—grounds—hearing—appeal to district court.
3-24-107. License required to operate manufactured dairy products plant.
3-24-108. Names and addresses of producers furnished on request.
3-24-109. Use of inspections, tests, samples, etc. as evidence.
3-24-110. Plans for construction, remodeling or relocating of manufacturing plant.
3-24-111. Monthly report of plant operator—penalty.
3-24-112.1. Licenses and schedule of license fees.
3-24-113. Removal or destruction of products in case of potential health hazards.
3-24-114. Commissioner's right of entry into dairy or plants for inspection—penalty.
3-24-115. Co-operative agreements with other agencies.
3-24-116. Buyers and plants to make records available to commissioner.
3-24-117. Labeling of cheese containers—products to be kept at safe temperature.
3-24-118. Sanitary regulation of imported products.
3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted.
3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful.
3-24-121. Manufacture, sale, or importation of products containing extraneous fats.
3-24-122. Filled dairy products unlawful—exceptions.
3-24-123. Manufactured products to conform to standards of identity.
3-24-124. Adulterating milk or cream unlawful.
3-24-126. Pasteurization required.
3-24-127. Pasteurization apparatus and records.
3-24-128. Pasteurization labeling.
3-24-129. Sanitary board license requirements applicable.
3-24-130. Antimonopoly statutes applicable.
3-24-131. Milk and manufactured dairy products to conform to standards.
3-24-132. Posting prices of butterfat required.
3-24-133. License required for butter or cheese wholesaler.
3-24-134. Requirements for containers and equipment.
3-24-135. Labeling of animal or vegetable fat contents on frozen desserts.
3-24-136. Labeling on manufactured dairy products to conform to requirements.
3-24-137. Penalties for violations.

3-2401 to 3-2403. (2620.1 to 2620.3) Repealed.

Repeal

Sections 3-2401 to 3-2403 (Secs. 1 to 3, Ch. 93, L. 1929), relating to functions of the department of agriculture, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2405 to 3-2431. (2620.5 to 2620.31) Repealed.

Repeal

Sections 3-2405 to 3-2431 (Secs. 5 to 28, Ch. 93, L. 1929; Secs. 2 to 6, Ch. 39, L. 1931; Sec. 2, Ch. 68, L. 1937; Sec. 1, Ch. 134, L. 1953; Sec. 1, Ch. 45, L. 1961; Secs. 1, 2, Ch. 121, L. 1965; Sec. 5, Ch. 121, L. 1965), relating to licensing and other regulatory provisions, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2432, 3-2433. (2620.32, 2620.33) Repealed.

Repeal

Sections 3-2432 and 3-2433 (Secs. 29, 30, Ch. 93, L. 1929; Sec. 7, Ch. 39, L. 1931; Sec. 1, Ch. 168, L. 1933), relating to standard measures for dairy products, were repealed by Sec. 43, Ch. 99, Laws 1969.

3-2434. (2620.34) **Repealed.**

Repeal

Section 3-2434 (Sec. 31, Ch. 93, L. 1929; Sec. 3, Ch. 68, L. 1937), relating to labeling of creamery butter packages, was repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2436 to 3-2444. (2620.36 to 2620.44) **Repealed.**

Repeal

Sections 3-2436 to 3-2444 (Secs. 33 to 39, Ch. 93, L. 1929; Secs. 8, 9, Ch. 39, L. 1931; Sec. 1. Ch. 98, L. 1941; Secs. 5, 6, Ch. 99, L. 1953), relating to extraneous fats, butter, cheese and oleomargine, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2447 to 3-2472. (2620.47 to 2620.72) **Repealed.**

Repeal

Sections 3-2447 to 3-2472 (Secs. 42 to 55, Ch. 93, L. 1929; Secs. 10, 11, Ch. 39, L. 1931; Sec. 1, Ch. 39, L. 1933; Secs. 4 to 7, Ch. 68, L. 1937; Sec. 3, Ch. 121, L. 1965), relating to milk and cream, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2476 to 3-2487. Repealed.

Repeal

Sections 3-2476 to 3-2487 (Secs. 1 to 12, Ch. 172, L. 1953; Sec. 1, Ch. 20, L. 1963), relating to ice cream and animal fat, were repealed by Sec. 51, Ch. 413, Laws 1971, effective January 1, 1972.

3-2488. General authority of commissioner—committee to assist in first regulations. The commissioner of agriculture of the state of Montana shall have the general authority to regulate, and to establish sanitation standards for persons operating dairies producing milk for manufacturing purposes; and to regulate, and establish sanitation and quality standards for any person engaged in the processing of manufactured dairy products, or of products made or sold in the semblance or imitation thereof, in the state of Montana when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant. For the purpose of promulgating these first original and unamended regulations, a committee composed of dairymen and manufactured dairy products plant operators, shall advise and assist the commissioner in the development and modification of such regulations.

This committee shall be selected in the following manner: Each manufactured dairy products plant operator and one of his regular milk producers shall be entitled to serve coequally with the commissioner in the development, modification and finalizing of such proposed original and unamended regulations. Prior to such committee meeting the commissioner shall inform all manufactured dairy products plant operators concerned, of their right to serve on the above-mentioned committee. Notification of such committee meeting shall be given to each manufactured dairy products plant operator concerned not less than thirty (30) days in advance of such scheduled committee meeting.

Failure upon the part of any manufactured dairy products plant operator and/or his selected milk producer to appear at such committee meeting shall constitute a waiver of his rights as provided for above.

History: En. Sec. 1, Ch. 413, L. 1971.

Title of Act

An act to be known as the Manufactured Dairy Products Act, repealing all of the present dairy products act and regulations contained in Montana statutes, Title 3, sections 3-2401 through 3-2403; 3-2405 through 3-2431; 3-2434; 3-2436 through 3-2444; 3-2447 through 3-2472; 3-2476

through 3-2487; providing for the authority and duties of the commissioner of agriculture with respect to this act; defining those products and procedures regulated by this act; providing for the licensing and license fees for dairies producing milk for manufacturing purposes, and for manufactured dairy products plants as defined; providing for the same licensing and regulatory authority for those nondairy products made in the semblance or imitation of those products defined in this act; providing for the promulgation of rules and regulations necessary to carry out the intent and purpose of this act; providing for inspection of dairies providing milk for manufacturing purposes and of manufactured dairy products plants, and the enforcement of rules and regulations pertaining to the sanitary production, manufacture, collection, transportation, handling, storage, and display of products governed by this act; providing for the establishment of standards of composition, quality, purity, and wholesomeness for dairy and nondairy products defined in this act; authorizing and establishing procedures for the denial, suspension, or revocation, for cause, of licenses issued under authority of this act; providing for those test procedures, the results of which, may be used as official and admissible evidence; providing authority for the commissioner of agriculture to make co-operative agreements with other state, federal, county, or municipal departments or agencies as may be needed to carry out the intent and purpose of this act; and providing for the penalties for violation of this act or of the rules and regulations adopted under the authority of this act; providing an effective date.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302 (1).

3-2489. Promulgation of minimum standards for milk or cream. The commissioner may establish and promulgate minimum standards for milk and cream used for manufacturing purposes; its production, transportation, grading, testing, use, processing, and the packaging, and storage of manufactured dairy products.

History: En. Sec. 2, Ch. 413, L. 1971.

3-2490. Licensing of persons engaged in production of milk. The commissioner or his authorized agents shall have the authority to license those persons engaged in the production of milk for manufacturing purposes and to license those persons who manufacture dairy products, or products made in their semblance or imitation when those products made in semblance or imitation of dairy products, are made in a manufactured dairy products plant.

The commissioner shall have the authority to examine and license weighers, graders, samplers and milk and cream testers in order to establish the qualifications of such persons to perform those operations, or tests for which such licenses are issued.

History: En. Sec. 3, Ch. 413, L. 1971.

3-2491. Hearings—suspension, revocation or denial of license. The commissioner shall have the authority to hold and conduct hearings relative to the suspension, revocation or denial of licenses; and, for good cause, after notice and opportunity for hearing, may suspend, revoke or deny licenses issued under authority of this act.

History: En. Sec. 4, Ch. 413, L. 1971.

3-2492. Required records and reports—examination. The commissioner shall have the authority to require dairies and dairy product manufacturers to maintain and produce for examination, or to report, such records as are necessary for carrying out his duties under this act.

History: En. Sec. 5, Ch. 413, L. 1971.

3-2493. Enforcement of laws and regulations—violation as misdemeanor. The commissioner shall supervise and enforce the laws and regulations of the state of Montana pertaining to the standards of quality and sanitation of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and all food additives used in manufacturing dairy products, and of all manufactured dairy products.

Rules and regulations promulgated under authority of this act shall have the full force and effect of law, and violation of any such rules and/or regulations shall constitute a misdemeanor, punishable as provided in the general penalties section of the act, unless a specific penalty has been provided.

History: En. Sec. 6, Ch. 413, L. 1971.

3-2494. Separability provision. If any section, subdivision, phrase, or sentence of this act or of the rules and regulations promulgated under authority of this act is determined by a court of competent jurisdiction to be unconstitutional, it shall not affect the remaining portions of the act or regulations.

History: En. Sec. 7, Ch. 413, L. 1971.

3-2495. New or amended rules or regulations—mailing—hearing—judicial review. Every new or amended rule or regulation proposed by the commissioner under authority of this act shall be mailed, to each person licensed hereunder who will be affected by such rule, regulation, or amendment, at least forty-five (45) days prior to the date on which the rule, amendment, or regulation shall become effective.

Upon application in writing filed at least fifteen (15) days before the effective date of such proposal, by any person licensed hereunder, the commissioner shall vacate the effective date of such proposed rule, regulation, or amendment and hold a public hearing on and take evidence concerning the same. Within thirty (30) days after the conclusion of such hearing the commissioner shall make written findings, and conclusions, and a written decision based thereon, determining whether such new or amended rule or regulation shall be promulgated. No new or amended rule or regulation promulgated following such hearing and conclusion shall take effect until ninety (90) days after the date of such decision.

The district court of the first judicial district shall have jurisdiction to review, modify, or set aside any such decision promulgating a new or amended rule or regualtion under this act upon petition made to it at any time prior to the effective date of such rule or regulation by any person claiming to be adversely affected by such decision.

History: En. Sec. 8, Ch. 413, L. 1971.

3-2496. Investigation of complaints and violations—injunction. The commissioner is authorized and directed to provide for regular periodic inspections and investigations to disclose violations of this act or of regulations promulgated under the authority of this act; to receive and provide for the investigation of complaints; and to request the institution and prosecution of civil or criminal actions, or both. The provisions of this

act and the rules and regulations issued in connection herewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated, impure, contaminated, misbranded, condemned, or mislabeled articles or products involved in a violation of this act or of said rules or regulations promulgated under the authority of this act shall be subject to seizure and disposition in accordance with an order of the court.

History: En. Sec. 9, Ch. 413, L. 1971.

3-2497. Definitions. Unless the context otherwise indicates, the following terms shall be construed, respectively to mean:

(1) The word "act" shall mean the state legislation and the regulations authorized under it pertaining to milk and cream for manufacturing purposes and to all manufactured dairy products including those dairy and nondairy products made in the semblance or imitation of manufactured dairy products when made in a manufactured dairy products plant.

(2) The word "commissioner" shall mean the commissioner of agriculture of the state of Montana or his authorized representative.

(3) The word "department" shall mean the department of agriculture of the state of Montana or its authorized representative.

(4) The word "division" shall mean the dairy and egg division of the state department of agriculture and/or its representatives.

(5) The words "milk" and "cream" concerning their use shall mean milk and cream sold, used or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as, but not limited to:

a. Butter.

b. Cheese including cottage cheese, low-fat cottage cheese, cheese curd and cream cheese which are either cultured or directly acidified and cheese dressings.

c. Ice cream and/or its mix.

d. Frozen dessert and/or its mix.

e. Sherbet of all kinds and/or their mixes.

f. Frozen ice cream bars, sandwiches, or cones and similar novelties.

g. Frozen desserts or products made in the semblance or imitation of frozen dessert.

h. Frozen confections and/or their mixes.

i. Water ices and/or their mixes.

j. Ice milk and/or its mix.

k. French ice cream, French custard, and/or their mixes.

l. Frozen custard and/or its mix and frozen yogurt.

m. Yogurt, flavored yogurt and low-fat yogurt.

n. Sour cream—either cultured and/or directly acidified.

o. Cream cheese—either cultured and/or directly acidified.

p. Buttermilk—either cultured and/or from churned butter or directly acidified.

q. Eggnog, low-fat eggnog, eggnog flavored milk, whipped cream, flavored toppings, and similar flavored products.

r. Dry or powdered milk.

s. Condensed milk products.

The definition of what constitutes each of the items named above, numbered "a" through "s," inclusive, shall conform to the standards of identity as set forth and as may be amended in the Code of Federal Regulations. If no such standards of identity are therein defined, then the standards adopted by the department shall prevail. The labeling of all manufactured dairy products shall be in accordance with the Montana Food, Drug and Cosmetic Act.

(6) "Manufactured dairy product" shall mean any item set forth above enumerated from (5)a through (5)s, or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality.

(7) The words "manufactured dairy products plant" or "factory" shall mean a place where milk or cream is collected, and converted into a product, or into a different state of appearance or quality and/or which manufactures those products listed under (5)a through (5)s, provided that if only products of semblance or imitation of dairy products are made; that plant shall not be considered as a manufactured dairy products plant.

(8) The word "creamery" shall mean a place where butter is made for commercial purposes.

(9) The words "cheese factory" shall mean a place where cheese including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing and low-fat counterparts of cheese either cultured or directly acidified are made for commercial purposes.

(10) The words "frozen dessert plant" shall mean any place where any products named in items "c" through "l" of section 5 above are made for commercial purposes.

(11) The words "cream station" shall mean any place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(12) The words "dairy" or "dairy farm" shall mean a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(13) The word "milk" (legal definition) shall mean the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States Department of Agriculture or in the process of being accredited when such milk or cream is sold for use in, intended for use in or used in a manufactured dairy product.

(14) The word "cream" shall mean the milk fat which rises to the surface when milk is allowed to stand, or which is separated from milk by centrifugal force when sold, used or intended for use in a manufactured product.

(15) The words "raw milk" or "raw milk products" shall mean milk or milk products which have not been treated by a process of pasteurization.

(16) The word "person" shall mean any individual, firm, partnership, corporation, co-operative, or any other business unit or trade device.

(17) The terms "pasteurization," "pasteurizing," and similar terms shall mean the process of heating every particle of milk or milk product to at least 145 degrees F., and holding it continuously at or above this temperature for at least thirty (30) minutes, or to at least 161 degrees F., and holding it continuously at or above this temperature for at least fifteen (15) seconds, in equipment which is properly operated and approved by the commissioner; provided, that milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F., and held continuously at or above this temperature for at least thirty (30) minutes, or to at least 175 degrees F., and held continuously at or above this temperature for at least twenty-five (25) seconds; provided, however, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the United States Public Health Service to be equally effective and which is approved by the commissioner.

(18) The word "agent" shall mean a person who is authorized by another person to act for him in dealing with a third person.

(19) The term "grading" shall mean the examination of milk, cream, or products thereof, by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality thereof.

(20) The term "testing," "test," "tested" and similar words shall refer to the examination of milk, cream, or manufactured dairy products thereof, by sight, odor, taste, or biological or chemical laboratory analysis to determine the quality, wholesomeness, or composition thereof.

(21) The term "safe temperature" shall mean 45 degrees F., or less, unless the product is frozen, in which case the temperature must be at, or below 0 degrees F.

(22) The term "and/or" used in this act or in the regulations promulgated under the authority of the act shall mean either one or the other or all.

(23) The word "producer" shall mean the person who exercises control over the production of milk or cream, delivered to a milk or cream receiving station or manufactured dairy products plant, or who receives payment for milk or cream used in manufacturing.

(24) The word "mix" shall mean and include the liquid unfrozen product from which those frozen products listed under (5)c, (5)d, (5)e, (5)g, (5)h, (5)i, (5)j, (5)k, and (5)l above are made.

(25) For purposes of reporting production, and licensing, the term "manufactured dairy product" shall mean and include but shall not be limited to:

a. Ice cream and/or its mix.

b. French ice cream, custard ice cream, French custard ice cream, and their low-fat counterparts and/or their mixes.

c. Sherbets of all kinds, and/or their mixes.

d. Animal and/or vegetable fat frozen desserts, and/or their mixes.

e. Frozen confections and/or their mixes when made in a manufactured dairy products plant.

f. Water ices and/or their mixes.

g. Frozen dessert sandwiches, bars, cones, and similar novelties.

h. Frozen desserts made of non-dairy products and/or their mixes when made in a manufactured dairy products plant.

i. Ice milk and/or its mix.

j. Cheese of all kinds including cottage cheese, cheese curd, cheese dressing and cream cheese either cultured or directly acidified.

k. Sour cream when either cultured or directly acidified.

l. Eggnog, low-fat eggnog, eggnog flavored milk and similar flavored products.

m. Buttermilk, either cultured and/or from churned butter or directly acidified.

n. Butter.

o. Yogurt—low-fat yogurt, flavored yogurt, either cultured or directly acidified, or frozen.

(26) "Official test" shall mean any test procedures outlined in the sources referred to under section 11 [3-2498] of samples, methods, rules of evidence.

(27) Water ice is a frozen product, containing but not limited to the following ingredients; water, sugar, flavoring, coloring, stabilizers and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

(28) The term C.I.P. shall mean the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation and when this procedure meets the 3-A accepted practices for permanently installed sanitary product—pipelines and cleaning systems.

(29) The term "filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to, milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(30) The term "intrastate commerce" means any and all commerce within the state of Montana subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(31) "Code of Federal Regulations" shall mean especially but not be limited to Title 21 which contains the definitions and standards of identity for products as established by the Food and Drug Administration, United States Department of Health, Education and Welfare.

(32) The word "culture" means the harmless lactic acid fermenting bacteria which are added to milk and/or cream to make such manufactured dairy products as cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(33) These terms "direct acidification—directly acidified" and similar terms refer to the process of adding a food grade acid or acids to milk and/or cream in lieu of or in addition to the adding of culture.

(34) The terms "mislabeled, unwholesome, food additives, optional ingredients, impure, misbranded, contaminated, adulterated, perishable, hazardous, unfit, spoiled, damaged" and similar terms when applied to any manufactured dairy product and/or product made in semblance or in imitation of a manufactured dairy product shall have the same meanings, force and effect as those same words as they are used in the Montana Food, Drug and Cosmetic Act contained in sections 27-701 to 27-723, R.C.M. 1947, inclusive.

History: En. Sec. 10, Ch. 413, L. 1971.

3-2498. Tests and analyses—admissibility as evidence. The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the state department of health or other laboratory approved by the commissioner, to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of such products.

Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, 12th edition—American Public Health Association, Inc., 1740 Broadway, New York, N.Y. 10019, Standard Methods for the Examination of Water and Waste Water, 12th edition—American Public Health Association, Inc., 1790 Broadway, New York, N.Y. 10019, or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, 11th edition as published by the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington 4, D.C. or any other appropriate tests approved by the department, and the results of such tests or analyses shall be admissible as prima facie evidence of the facts disclosed, in any court, hearing, or proceeding arising under or from this act, when identified by the sample numbers and verified by the department representative and analyst handling the same. Such tests shall be designated and referred to as "official tests."

History: En. Sec. 11, Ch. 413, L. 1971.

3-2499. Taking and preservation of samples. All persons purchasing or sampling milk or cream for manufacture, sale or shipment, and paying for the same on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, shall at the time of receiving such milk or cream take a sample thereof. All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained and such record of purchase shall also show the weight of the milk or cream, the results of such analysis, the date of sampling and the amount paid. All milk and cream samples upon which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of fourteen (14) days following testing in the case of milk and for at least two (2) days in the case of cream.

Such samples shall be subject to retest by the department. Nothing in this section shall prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks, or the use of composite or single samples of milk according to rules and regulations adopted by the commissioner, or those test procedures prescribed in this act.

History: En. Sec. 12, Ch. 413, L. 1971.

3-24-100. License required for milk or cream route. It shall be unlawful for any person to engage in hauling milk or cream upon any established milk or cream route, for any dairy products manufacturing plant, milk plant, or milk or cream buying or receiving station, without first procuring a license from the state department of agriculture. The fee for such license shall be five dollars ($5) annually.

History: En. Sec. 13, Ch. 413, L. 1971.

3-24-101. License—privilege not a right—expiration—renewal—nontransferability. All licenses issued by authority of this act or by compliance with the regulations promulgated by this act's authority shall be issued as a matter of privilege, rather than as a matter of right, and only after properly qualifying under the rules and regulations of the department. All licenses issued under the authority of the act shall be valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration upon payment of the required fee. All licenses issued under this act shall be posted in conspicuous view at the place of business. Licenses issued under this act shall not be transferable from place to place nor person to person. Penalties of five dollars ($5) per month or fraction thereof from January 31 of each year may be imposed by the commissioner for any person's failure to apply for any license provided for under this act. Regulatory action may not be taken against any dairyman licensed under this act, until two (2) years following the promulgation and adoption of the regulations as authorized under this act.

History: En. Sec. 14, Ch. 413, L. 1971.

3-24-102. Examination and licensing of persons engaged in testing. No person shall operate any butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of such values, without first passing an appropriate examination and obtaining the license required by the department. Any person desiring to operate such tests shall apply to the state department of agriculture for permission to take the butterfat, protein, solids, or other component content test operator's examination. Such examination shall be given to the applicant by the chief of the dairy and egg division of the department, or his agent. Upon passing the examination to the satisfaction of the commissioner, the applicant shall be issued a license authorizing him to conduct such tests in Montana. A fee of ten dollars ($10) shall be paid for each such license and for each renewal.

Milk and cream tester's licenses may be revoked, suspended or denied where testing is not conducted in accordance with official test procedures,

or with department regulations, or if the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee shall be subject to the penalties provided in this act. Any person who shall alter the results of any official test shall be subject to the penalties prescribed under the authority of this act.

History: En. Sec. 15, Ch. 413, L. 1971.

3-24-103. Sampling and testing by department. The department shall have the authority to sample, test, and/or retest samples of milk or cream or their products, at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

History: En. Sec. 16, Ch. 413, L. 1971.

3-24-104. Grading of milk—condemnation of unsafe milk. All milk or cream purchased for use in milk plants or to be used in any manufactured dairy product in Montana shall be graded, by licensed graders, weighers and samplers, and if such milk or cream is found to be: musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, or substances or excessive bacteria, it shall be unlawful to sell, purchase, or use such milk or cream for any food purpose whatsoever. The milk or cream grader or commissioner shall have the authority and it shall be his duty to condemn such milk or cream, and he may add to such milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971.

3-24-105. Employment of grader, weigher, and sampler—license required—revocation of operator's license. All persons receiving or purchasing milk or cream, and all persons collecting milk or cream on milk or cream routes, shall provide a licensed grader, weigher, and sampler, at each such receiving station or for each such route.

It shall be unlawful for any person to grade, weigh, or sample any milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing such examination as may be required by the commissioner.

Any person who knowingly employs an unlicensed person as a grader, weigher, and sampler, or one whose license as such has been revoked or suspended, shall be subject to revocation of his own license to operate a manufactured dairy products plant, or cream or milk receiving station or the penalties prescribed in this act.

History: En. Sec. 18, Ch. 413, L. 1971.

3-24-106. Renewal, suspension or revocation of license—grounds—hearing—appeal to district court. The commissioner is hereby empowered and authorized to deny renewal of, suspend, or revoke, any license issued

under the provisions of this act or its regulations, for cause or failure to comply with the provisions of this act or with any of the rules, regulations, testing procedures, or methods promulgated under the authority of this act, or when the commissioner has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

Before revoking, denying renewal of or suspending a license, the commissioner shall give written notice of his intention to revoke, deny or suspend the license, his reasons therefor, and shall give the licensee a time limit, of ten (10) days from the time of receiving the notice during which time the licensee may request a hearing to show cause why his license should not be revoked, denied or suspended. Such notice shall be sent by certified mail, or personal service may be made upon the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the commissioner shall be considered his desire not to contest the commissioner's reasons for suspending, denying, or revoking of said license.

However, if the licensee does request a hearing, the commissioner shall then appoint a time and place for an administrative hearing within the county where the licensee is licensed.

The date established for the hearing must be not less than ten (10) days nor more than thirty (30) days after receipt of the licensee's request for such hearing. Such request for a hearing shall serve as a bar to prosecution until a decision from the commissioner becomes final. The licensee shall at such hearing, have the opportunity to testify or to present evidence having a bearing on the denial, suspension, or revocation of his license, and, after hearing all the evidence, the commissioner shall make a determination. If a license is suspended, denied or revoked it shall not be reinstated until examination or inspection by the commissioner shows that the cause for suspension, denial or revocation has been eliminated or corrected.

It shall be unlawful for any licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee shall be subject to the penalties provided in the act.

Any licensee who feels aggrieved at the decision of the commissioner in matters pertaining to suspension, denial, or revocation of a license may appeal, within thirty (30) days after the date of determination by the commissioner, to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state to the county of its principal place of business.

If a license is revoked, a new license must be obtained from the department but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971.

3-24-107. License required to operate manufactured dairy products plant. It shall be unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed or evaporated milk and/or

cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt or frozen dessert manufacturing plant without first obtaining a license from the department.

Any manufactured dairy products plant or dairy which undergoes a change of ownership shall be considered a new plant or dairy for relicensing purposes; provided, that changes of ownership shall not be construed to include changes of stockholders.

History: En. Sec. 20, Ch. 413, L. 1971.

3-24-108. Names and addresses of producers furnished on request. The operator of any manufactured dairy products plant or grade A milk plant shall, upon request of the commissioner, furnish the department with the names and addresses of all producers from whom such plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971.

3-24-109. Use of inspections, tests, samples, etc. as evidence. All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this act may be used as evidence in any court of jurisdiction, at hearings or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971.

3-24-110. Plans for construction, remodeling or relocating of manufacturing plant. Prior to the construction, or extensive remodeling or relocating of a dairy products manufacturing plant, detailed plans shall be submitted to the commissioner for review and approval before construction, remodeling or relocating begins. Such plans must show: size of rooms, type of building material, lighting and electrical system, ventilation, location of water supply, sewage disposal, materials to be used in floors, walls and ceilings, location and type of floor drains, plumbing, plumbing fixtures, equipment, and the makes, models, and serial numbers of any new or used equipment or machinery being added to or replacing existing equipment or machinery. Replacement equipment shall be of the NSF or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to regulations of the department and of building, electrical, and plumbing codes in effect in the area. Waste water, sewage and air pollutants shall be disposed by means approved by the Montana state department of health, and evidence shall be submitted that approval has been obtained from the state department of health.

History: En. Sec. 23, Ch. 413, L. 1971.

3-24-111. Monthly report of plant operator—penalty. It shall be the duty of every person operating a manufactured dairy products plant in this state to render to the department once a month and not later than the tenth day of each month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or

manufactured during the preceding month as requested by the commissioner. Any person failing to render the report required by this section or failing to make said report by the date due shall be guilty of a misdemeanor and subject to the penalties provided in the act.

History: En. Sec. 24, Ch. 413, L. 1971.

3-24-112. Repealed.

Repeal

Section 3-24-112 (Sec. 25, Ch. 413, L. 1971), relating to fees required under the Manufactured Dairy Products Act, was repealed by Sec. 2, Ch. 451, Laws 1973. For new law see sec. 3-24-112.1.

3-24-112.1. Licenses and schedule of license fees. Licenses and license fees required under this act are as follows:

(1) Manufactured dairy products plant $50

However, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in section 27-612; and no license is required to manufacture nondairy products when only such products are manufactured.

(2) Cream station $5

However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premise and means of transporting milk or cream is subject to official inspection.

(3) Dairy producing milk for manufacturing purposes $5

However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by section 46-232.

(4) Grader-weigher-sampler ..... $ 5
(5) Tester $10
(6) Hauler ..... $ 5

However, a separate grader-weigher-sampler, tester and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant or is self-employed.

A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from place to place nor from person to person. A penalty of five dollars ($5) per month, or fraction of a month, after January 31 may be imposed by the department on a person who fails to apply for renewal of his license if under the act that person is required to be licensed.

All license fees collected shall be deposited in the general fund.

History: En. Sec. 1, Ch. 451, L. 1973.

Title of Act

An act to provide for the establishment of requirements on milk for manufacturing purposes and its production and processing, known as the "manufactured dairy products act"; repealing section 3-24-112, R. C. M. 1947.

Repealing Clause

Section 2 of ch. 451, Laws 1973 read "Section 3-24-112, R. C. M. 1947, is repealed."

3-24-113. Removal or destruction of products in case of potential health hazards. When epidemiological evidence, or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale, any milk or manufactured dairy product which is adulterated, or which may be detrimental to the health or safety of the consumer, the commissioner may request the state department of health to remove such product from the market and/or to be held, disposed of, destroyed, or treated in such a manner so as to no longer constitute a potential health hazard.

It shall be unlawful for any person, in any manner, to violate any order requiring removal from the market, holding, disposing of, destroying, or treating such products. Violation shall be punishable as a misdemeanor, and each such violation shall be subject to a fine of not less than twenty-five dollars ($25) nor more than two hundred fifty dollars ($250) or by imprisonment in the county jail for not more than thirty (30) days, or to both fine and imprisonment.

History: En. Sec. 26, Ch. 413, L. 1971.

3-24-114. Commissioner's right of entry into dairy or plants for inspection—penalty. The commissioner or authorized agent shall have the right of entry during normal business hours, including Sundays and holidays, into any dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant or cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold or offered for sale, stored, or while in transit; for the purpose of inspection such dairy or plant, its facilities, products, or to obtain samples for testing or analysis. It shall be unlawful for any person to interfere with or obstruct the commissioner or his authorized agent in the performance of his duty to enter, inspect, and/or obtain samples.

Violation of the provisions of this section shall constitute a misdemeanor and shall subject the offender to a fine of not less than fifty dollars ($50) and not more than five hundred dollars ($500) or to imprisonment in the county jail for not less than one (1) nor more than thirty (30) days or to both such fine and imprisonment.

History: En. Sec. 27, Ch. 413, L. 1971.

3-24-115. Co-operative agreements with other agencies. The commissioner is specifically authorized to enter into co-operative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate carrying out the functions or duties of his office.

This section of the act is expressly intended to include authority for the commissioner to establish co-operative working agreements with any health departments, sanitarians, or health officers, when special investigations, sampling or analyses are deemed advisable.

History: En. Sec. 28, Ch. 413, L. 1971.

3-24-116. Buyers and plants to make records available to commissioner. All persons who, including co-operatives which, buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream, shall make available to the commissioner upon his request, all records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

Each manufactured dairy product plant shall, upon request by the commissioner, make available to him all production records of all dairy manufactured products covered by this act and of all manufactured products made in semblance or imitation thereof.

History: En. Sec. 29, Ch. 413, L. 1971.

3-24-117. Labeling of cheese containers—products to be kept at safe temperature. It shall be unlawful, and punishable as a misdemeanor, for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible label or inscription indicating the net weight, type or style of cheese, and the manufacturer's or distributor's name and address or plant number.

All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana, shall be considered perishable and potentially hazardous, and shall be kept at safe temperature or below; provided, however that nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening or aging of certain cheeses and cultured products, and provided, further, that this section of the act does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

History: En. Sec. 30, Ch. 413, L. 1971.

3-24-118. Sanitary regulation of imported products. All manufactured dairy products, or imitations or products made in semblance thereof, covered by this act, shipped into Montana for sale display or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: En. Sec. 31, Ch. 413, L. 1971.

3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package—use of codes and numbers permitted. All manufactured dairy products sold, offered, displayed or exposed for sale, at wholesale or retail in Montana, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and whole-

saler's or retailer's names clearly printed in a conspicuous place on the package, or wrapper, in which it is sold. In case a manufactured dairy product is packaged in a plant other than that of the plant which name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which such product was packaged or wrapped. Provided, however, that nothing in this section of the act shall be construed as preventing the use of codes or numbers which designate the packaged or wrapping plant, when such codes or numbers are registered in the office of the dairy and egg division of the department.

History: En. Sec. 32, Ch. 413, L. 1971.

3-24-120. Sale or use of impure, colored, adulterated or unwholesome milk unlawful. It shall be unlawful for any person to sell, manufacture or exchange, display or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: En. Sec. 33, Ch. 413, L. 1971.

3-24-121. Manufacture, sale, or importation of products containing extraneous fats. It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products, or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing nonapproved ingredients with the intent to sell the same as milk, cream or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream or manufactured dairy products.

History: En. Sec. 34, Ch. 413, L. 1971.

3-24-122. Filled dairy products unlawful—exceptions. Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this act to correct, prevent and eliminate the condition above referred to; to protect the public from confusion, fraud and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods.

(1) Therefore, it shall be unlawful in intrastate commerce for any person to manufacture, sell, exchange, display, purvey, transport or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product.

(2) It shall be unlawful for any person owning or operating a bakery, confectionery shop, factory or other place where food products are prepared or manufactured for sale, exchange or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared.

(3) It shall be unlawful in intrastate commerce for any person knowingly to sell, exchange, purvey, transport or possess any food product in which any filled dairy product is an ingredient, provided, however, that the term "filled dairy product" shall not be construed to mean or include:

(a) Oleomargarine;

(b) Any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) Any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) Any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(e) Any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed one one-hundredths (1/100) of one per cent (1%) of the weight of the finished dairy product.

History: En. Sec. 35, Ch. 413, L. 1971.

3-24-123. Manufactured products to conform to standards of identity. It shall be unlawful for any person to manufacture, display, transport, sell or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations, or to the standard of identity established by the department.

History: En. Sec. 36, Ch. 413, L. 1971.

3-24-124. Adulterating milk or cream unlawful. It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes, or for any manufactured dairy product to contain an adulterant. For purposes of this act, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this section shall be misdemeanors, and shall be punishable by fine or imprisonment, or both, as provided in the act.

History: En. Sec. 37, Ch. 413, L. 1971.

3-24-125. Repealed.

Repeal

Section 3-24-125 (Sec. 38, Ch. 413, L. 1971), regulating advertising of oleomargarine, was repealed by Sec. 1, Ch. 286, Laws 1973.

3-24-126. Pasteurization required. All milk and cream used in the manufacture of any dairy product, or products made in semblance of imitations of dairy products, sold, offered for sale, purveyed, stored, displayed or transported in Montana, shall be pasteurized; provided, however, that cheese held, stored, or aged, for at least sixty (60) days at not less than 35 degrees F., shall not be required to be made from pasteurized milk or cream, but shall be required to be labeled "made from raw" or "unpasteurized milk" or "unpasteurized cream," as the case may be. Other cultured raw or unpasteurized dairy products which can be made safe by aging shall also be required to be similarly aged and labeled as required above.

History: En. Sec. 39, Ch. 413, L. 1971.

3-24-127. Pasteurization apparatus and records. The commissioner shall have the authority to prescribe or establish regulations which he deems necessary to assure proper control and use of all equipment or apparatus used in the process of pasteurization, and to require the operation of such devices and apparatus as are needed to accurately record, and indicate, temperatures to which and the length of time for which, the pasteurized product has been heated including those periods and temperatures when such equipment is cleaned and sanitized by C.I.P. method. Any person using pasteurizing equipment within the state of Montana shall properly record and have available to the commissioner for the preceding two months, all records pertaining to the pasteurization of any product, and said records shall, at all times, be open to the inspection of the department, the state department of health, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

All pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set and sealed by the commissioner. Such seals shall not be removed or broken without first notifying the dairy and egg division.

History: En. Sec. 40, Ch. 413, L. 1971.

3-24-128. Pasteurization labeling. It shall be unlawful for any person to sell, offer for sale or exchange, or to have in possession for such purpose, any milk, cream, or manufactured dairy product, in any container or package, marked, labeled, or in any way designating the contents thereof as "pasteurized," unless the same has been treated by an approved process of pasteurization, as is required by the commissioner.

History: En. Sec. 41, Ch. 413, L. 1971.

3-24-129. Sanitary board license requirements applicable. The licenses required under this act apply only to those licenses issued by the Montana state department of agriculture. Nothing in this act shall be deemed to repeal or abrogate the authority of or the issuance of licenses by the state livestock sanitary board or the state department of health.

Provided, however, that requirements for a license from the state department of agriculture shall not apply where such license duplicates one issued by the state livestock sanitary board.

History: En. Sec. 42, Ch. 413, L. 1971.

3-24-130. Antimonopoly statutes applicable. The provisions of state statute sections 94-1107 to 94-1114 inclusive, relating to monopoly in the purchase or sale of products in general use, are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture, and those who shall violate any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products, are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 43, Ch. 413, L. 1971.

3-24-131. Milk and manufactured dairy products to conform to standards. All milk and cream used in manufactured dairy products, and the manufactured dairy products, shall conform to the standards of purity, quality, and wholesomeness as provided in this act or in the regulations promulgated under the authority of this act.

History: En. Sec. 44, Ch. 413, L. 1971.

3-24-132. Posting prices of butterfat required. All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat, or other component content, of milk or cream, in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: En. Sec. 45, Ch. 413, L. 1971.

3-24-133. License required for butter or cheese wholesaler. It shall be unlawful for any person to sell, exchange, or offer for sale or exchange, at wholesale, or to have in possession with the intent to sell, exchange, or offer for sale at wholesale, any butter or cheese without first procuring a license from the department for that purpose. Where such person conducts such sale or exchange at more than one place of business, a separate license shall be required for each such place of business and a separate fee shall be paid for each license.

Provided, however, that any manufactured dairy products plant which is licensed by the department to manufacture butter or cheese shall not be required to obtain this license.

All wholesalers or jobbers handling butter or cheese shall conduct their business under the same regulations of cleanliness, sanitation, and refrigeration, as are prescribed for manufactured dairy products plants.

History: En. Sec. 46, Ch. 413, L. 1971.

3-24-134. Requirements for containers and equipment. All containers and equipment used in the manufacture, storage, holding display and transportation of any manufactured dairy product shall be nontoxic, easily cleanable and free from dents, cracks, crevices, rust and any other condition which would prevent cleaning and sanitizing.

History: En. Sec. 47, Ch. 413, L. 1971.

3-24-135. Labeling of animal or vegetable fat contents on frozen desserts. Any frozen dessert made in the semblance of or in imitation of ice cream in this act, which contains any amount of animal fat (other than milk fat), or vegetable fat or oil, (other than any such fat or oil which is naturally present in any flavoring ingredient), shall be labeled as an animal fat product, or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products shall be manufactured from a pasteurized mix, which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts shall be subject to the sanitary, reporting, and licensing regulations of this act and of the regulations promulgated under the authority of this act.

No representation shall be made by statement, word, grade designation, design, symbol, device, or in any other manner, on any container, package, or wrapper, or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet or any of their low-fat counterparts or derivatives, or any other products which are prohibited from containing animal or vegetable fats.

The container, package, or wrapper, containing such animal fat or vegetable fat frozen dessert, shall be clearly and plainly marked, labeled, or printed, on the outside, in boldfaced letters, with the words, "Animal Fat Product," "Vegetable Fat Product," "Animal-Vegetable Fat Products," or "Vegetable-Animal Fat Product" as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils; except that spices, flavorings, or colorings may be designated as such without naming each.

History: En. Sec. 48, Ch. 413, L. 1971.

3-24-136. Labeling on manufactured dairy products to conform to requirements. Labeling on all manufactured dairy products shall conform to all requirements of the Food, Drug and Cosmetic Act, and to such other requirements as may be adopted by the department or the state department of health.

History: En. Sec. 49, Ch. 413, L. 1971.

3-24-137. Penalties for violations. Any person who shall violate any of the provisions of this act, or who shall fail to comply with the regulations promulgated under the authority of this act or promulgated by the commissioner, or who shall fail or neglect to obey any lawful order of the commissioner or department, made pursuant to this act, shall upon conviction, be guilty of a misdemeanor.

Unless a specific penalty is otherwise provided in the act or regulations for such offense, the offender shall be subject to a fine of not less than twenty-five dollars ($25) and not more than five hundred dollars ($500) or by imprisonment in the county jail for not to exceed six (6) months, or to both such fine and imprisonment.

History: En. Sec. 50, Ch. 413, L. 1971.

Repealing Clause

Section 51 of Ch. 413, Laws 1971 read "Sections 3-2401, 3-2402, 3-2403, 3-2405, 3-2406, 3-2407, 3-2408, 3-2409, 3-2410, 3-2411, 3-2412, 3-2413, 3-2414, 3-2415, 3-2416, 3-2417, 3-2418, 3-2419, 3-2420, 3-2421, 3-2422, 3-2423, 3-2424, 3-2425, 3-2426, 3-2427, 3-2428, 3-2429, 3-2430, 3-2431, 3-2434, 3-2436, 3-2437,

3-2438, 3-2439, 3-2440, 3-2441, 3-2442, 3-2443, 3-2444, 3-2447, 3-2448, 3-2449, 3-2450, 3-2451, 3-2452, 3-2453, 3-2454, 3-2455, 3-2456, 3-2457, 3-2458, 3-2459, 3-2460, 3-2461, 3-2462, 3-2463, 3-2464, 3-2465, 3-2466, 3-2467, 3-2468, 3-2469, 3-2470, 3-2471, 3-2472, 3-2476, 3-2477, 3-2478, 3-2479, 3-2480, 3-2481, 3-2482, 3-2483, 3-2484, 3-2485, 3-2486, 3-2487 are repealed."

Effective Date

Section 52 of Ch. 413, Laws 1971 read "This act is effective on January 1, 1972."

CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

3-2501. Montana quality label.

Cross-References

Commissioner's functions transferred to department of livestock, sec. 82A-1302.

CHAPTER 29—WHEAT RESEARCH AND MARKETING

Section
3-2911. Annual assessment on wheat grown.
3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment.
3-2914. Commissioner to report.
3-2917. Research and marketing account—sources—use—expenditures.

3-2905. Governor to appoint administrative committee—duties, etc.

Cross-References

Committee continued in department of agriculture, sec. 82A-304.

3-2911. Annual assessment on wheat grown. There is hereby levied an annual assessment of two and one-half (2½) mills per bushel upon all wheat grown in the state of Montana, and sold through commercial channels beginning August 20, 1967. The assessment is hereby levied and imposed on each grower of wheat in the state of Montana:

(1) and (2) * * * [Same as parent volume.]

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat grower parts with title to the wheat, or creates some interest therein in a pledgee, mortgagee or other person.

History: En. Sec. 11, Ch. 314, L. 1967; amd. Sec. 1, Ch. 201, L. 1971.

Amendments

The 1971 amendment deleted "unless a grower or his agent at the time of transaction shall request in writing that no assessment be made" from the end of the preliminary paragraph.

3-2913. Buyer's delivery of invoice to grower—form—filing of sworn statement—payment of assessment. (1) The purchaser of the wheat at the time of settlement therefor on sale, or the pledgee or mortgagee or other lender at the time of its loan or advance, shall make and deliver separate invoices for each purchase to the grower. Such invoices shall be on forms approved by the administrative committee showing.

(a) to (d) * * * [Same as parent volume.]

(2) * * * [Same as parent volume.]

(3) The statement referred to in subsection (1) (2) of this section, shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

(4) At any time after thirty (30) days from the deduction of the assessment and before the expiration of ninety (90) days following such deduction by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request therefor to the administrative committee through the commissioner of agriculture obtain a refund in the amount of the assessment deducted by said first purchaser or said first lender. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The wheat research and marketing division shall keep complete records of all refunds made under the provisions of this act. Records of refunds may be destroyed two (2) years after the refund is made. All original invoices shall be returned to the grower with the refund payment.

History: En. Sec. 13, Ch. 314, L. 1967; amd. Sec. 2, Ch. 201, L. 1971.

Amendments

The 1971 amendment added subsection (4) and made minor changes in style.

3-2914. Commissioner to report. The commissioner of agriculture and the chief of the wheat research and marketing division shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 14, Ch. 314, L. 1967; amd. Sec. 5, Ch. 93, L. 1969.

Amendments

The 1969 amendment rewrote this section which formerly required annual reports.

3-2917. Research and marketing account—sources—use—expenditures. (1) There shall be an account in the federal and private revenue fund known as the wheat research and marketing account. There shall be placed in the account:

(a) and (b). * * * [Same as parent volume.]

(2) * * * [Same as parent volume.]

(3) There shall be paid out of this account claims for expenditures under this act as are approved by the commissioner of agriculture and the state controller.

History: En. Sec. 17, Ch. 314, L. 1967; amd. Sec. 2, Ch. 70, L. 1973.

Amendments

The 1973 amendment substituted "federal and private revenue fund" for "revolving fund" in the first sentence of subdivision (1); deleted "revolving" from the name of the account established by the first sentence of subdivision (1); deleted a subdivision (3) providing for transfer to the general fund of one percent of the moneys collected; redesignated former subdivision (4) as subdivision (3); and made minor changes in style.

3-2920. Repealed.

Repeal

Section 3-2920 (Sec. 21, Ch. 314, L. 1967), relating to the duration of the act, was repealed by Sec. 1, Ch. 53, Laws 1973.

TITLE 4—ALCOHOLIC BEVERAGES

Chapter
1. State Liquor Control Act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-114, 4-116, 4-121, 4-153, 4-161.
2. State Liquor Control Act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-227, 4-235, 4-240.
3. Montana Beer Act—licensing sale of beer under supervision of state liquor control board, 4-303, 4-317, 4-322, 4-324, 4-330, 4-337, 4-347, 4-347.1, 4-354.
4. Montana Retail Liquor License Act—sales by licensees of board, 4-403, 4-408.1, 4-408.2, 4-413, 4-414, 4-439.
5. Identification cards, 4-502, 4-504, 4-506, 4-510.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

Section
4-114. Establishment of state liquor stores—hours—kinds and prices of liquor.
4-116. Provisions concerning sale of liquor and beer by vendors.
4-121. When sales of liquor forbidden.
4-153. Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.
4-161. Age limit for sale of liquor.

4-101. (2815.60) Citation of State Liquor Control Act, etc.

Compiler's Notes

Chapter 238, Laws 1969 provided for the issuance and sale of bonds by the state board of examiners for the purpose of acquiring a site for and erecting a warehouse and administration building for the Montana Liquor Control Board.

4-104. (2815.63) Montana liquor control board—creation—etc.

Cross-References

Board continued in department of revenue, sec. 82A-1805.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

4-108. (2815.63) Repealed.

Repeal

Section 4-108 (Sec. 4, Ch. 105, L. 1933; Sec. 1, Ch. 30, L. 1937; Sec. 1, Ch. 243, L. 1947; Sec. 1, Ch. 140, L. 1949; Sec. 1, Ch. 183, L. 1951; Sec. 2, Ch. 235, L. 1957; Sec. 2, Ch. 151, L. 1963; Sec. 1, Ch. 265, L. 1967; Sec. 1, Ch. 376, L. 1971), relating to salaries of the state liquor administrator and his employees, was repealed by Sec. 1, Ch. 42, Laws 1973.

4-114. (2815.69) Establishment of state liquor stores—hours—kinds and prices of liquor. The board shall establish and maintain at the county seats and such other places as the board deems advisable, one or more stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars ($450,000) or over during the

immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the board shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the board shall employ the necessary help to operate said stores and shall designate the duties to be performed by the employees; the board may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including legal holidays, and election days.

History: En. Sec. 10, Ch. 105, L. 1933; amd. Sec. 4, Ch. 30, L. 1937; amd. Sec. 1, Ch. 237, L. 1947; amd. Sec. 1, Ch. 162, L. 1949; amd. Sec. 1, Ch. 62, L. 1971.

Amendments

The 1971 amendment substituted "between the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including" in the final sentence for "on Sundays."

4-116. (2815.71) **Provisions concerning sale of liquor and beer by vendors.** A vendor may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this act and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969.

Amendments

The 1969 amendment deleted the subsection (1) designation at the beginning of the section and added the proviso; deleted subsection (2) which prohibited delivery before vendor had received a written order and had been paid the purchase price in cash; and deleted subsection (3) which provided that a vendor might sell and deliver beer provided that no delivery should take place until the purchaser had paid in the manner prescribed by regulations.

4-121. (2815.75) **When sales of liquor forbidden.**

History: En. Sec. 16, Ch. 105, L. 1933; amd. Sec. 5, Ch. 30, L. 1937; amd. Sec. 2, Ch. 62, L. 1971.

Compiler's Notes

Laws 1971, Ch. 62 purported to amend this section but made no change. For section, see parent volume.

4-153. (2815.107) **Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.** (1) to (3) * * * [Same as parent volume.]

(4) The prohibition contained in subsection (3) of this section does not prohibit the board from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation pro-

posing to sell any spirituous liquors to the Montana liquor control board shall submit, without cost to the board prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the board, when a brand of liquor has been accepted for testing by the board, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The board shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the board's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor control board, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The board shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

History: En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965; amd. Sec. 1, Ch. 72, L. 1971.

Amendments

The 1971 amendment substituted "chemical testing, subject to the following limitations" at the end of the preliminary paragraph of subsection (4) for "quality determination"; inserted paragraphs (a) and (b) in subsection (4); designated the former second sentence of subsection (4) as paragraph (4)(c); inserted "date received, the laboratory or chemist to whom forwarded, the board's action on the brand" in paragraph (4)(c); and added subsection (5).

Effective Date

Section 2 of Ch. 72, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

4-161. (2815.115) **Age limit for sale of liquor.** Except in the case of liquor given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply liquor to any person under the age of eighteen (18) years, or permit any person under that age to consume liquor.

History: En. Sec. 56, Ch. 105, L. 1933; amd. Sec. 1, Ch. 240, L. 1971; amd. Sec. 2, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age limit from 21 to 19 years; and made a minor change in style.

The 1973 amendment reduced the minimum age from nineteen to eighteen years.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)—INTERDICTION AND OTHER ENFORCEMENT PROVISIONS—FINANCE—MISCELLANEOUS

Section

4-227. Reports to state examiner—biennial reports—contents.
4-235. Indebtedness may be created—limitation.
4-240. License tax on liquor—amount—distribution of proceeds.

4-227. (2815.152) **Reports to state examiner—biennial reports—contents.** (1) Effective July 1, 1949 the board shall from time to time make reports to the state examiner covering such matters in connection with administration or enforcement of this act as he may require, and shall also report as provided in section 2 [82-4002] of this act.

(2) The books and records of the board shall be at all times subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: En. Sec. 92, Ch. 105, L. 1933; amd. Sec. 1, Ch. 86, L. 1949; amd. Sec. 6, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (1), substituted the provision for section 82-4002 biennial reports for the former provision for annual reports, deleted subdivisions (a) through (c), which provided for contents of the reports; deleted subsection (2), which provided for laying the reports before the legislature and redesignated former subsection (3) as subsection (2).

4-235. (2815.161) **Indebtedness may be created—limitation.** The board is hereby authorized to incur indebtedness in the administration of this act for necessary expenses and the acquisition of necessary property and merchandise, provided, however, that the total amount of outstanding indebtedness, exclusive of indebtedness incurred for merchandise held for resale, shall not at any time exceed the sum of twenty-five thousand dollars ($25,000) and provided further that any indebtedness so incurred by the board shall be paid solely out of the moneys arising in the administration of this act.

History: En. Sec. 101, Ch. 105, L. 1933; amd. Sec. 1, Ch. 77, L. 1971.

Amendments

The 1971 amendment inserted "exclusive of indebtedness incurred for merchandise held for resale" in the first proviso.

Effective Date

Section 2 of Ch. 77, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

4-240. License tax on liquor—amount—distribution of proceeds. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of four per centum (4%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the Montana liquor control board. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by said board. Said four per centum (4%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The Montana liquor control board shall retain the amount of such four per centum (4%) license tax so received in a separate account and shall apportion said license tax to the treasurers of the counties according to the amount of liquor sold by said board to the purchasers in each county. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the board shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-241, R. C. M. 1947.

The Montana liquor control board shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (¼) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (¾) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969.

Amendments

The 1969 amendment inserted the sixth sentence of the first paragraph.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section
4-303. Closing hours for license retail beer establishments.
4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.
4-322. Unlawful for wholesaler to sell to public.
4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one (31) gallons.
4-330. Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.
4-337. Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under eighteen (18) years of age or disorderly person.
4-347. Revenue to be paid to state treasurer—disposition of revenue.
4-347.1. Revenue allocation.
4-354. Effect when vote is against sale of beer.

4-303. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A.M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.;

provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the time such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

History: En. Sec. 1, Ch. 161, L. 1943; amd. Sec. 1, Ch. 162, L. 1959; amd. Sec. 1, Ch. 242, L. 1973.

Amendments

The 1973 amendment deleted subdivision (c) which prohibited the sale of beer during the hours when the polls are open for a state or national general or primary election.

4-317. (2815.22) **Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.** (1) * * * [Same as parent volume.]

(2) In addition to the annual license tax imposed by section 4-341, a tax of three dollars ($3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which

said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971.

Amendments

The 1969 amendment added to the end of subsection (2) a proviso increasing the tax from $1.50 to $3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by changing the tax specified in subsection (2) from $1.50 to $3.00 and deleting the proviso added by the 1969 amendment.

4-322. (2815.27) **Unlawful for wholesaler to sell to public.** It shall be unlawful for any wholesaler to give, sell, deliver or distribute any beer purchased or acquired by him to the public.

History: En. Sec. 18, Ch. 109, L. 1933; amd. Sec. 7, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 274, L. 1973.

Amendments

The 1973 amendment substituted this section for a section permitting any wholesaler to sell, deliver or distribute beer to the public in original packages of not less than two gallons, to be taken from the premises in unbroken packages for consumption off the premises.

4-324. (2815.29) **Tax on imported beer—computation in case of barrels of capacity other than thirty-one (31) gallons.** A tax of three dollars ($3) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969; amd. Sec. 2, Ch. 421, L. 1971.

Amendments

The 1969 amendment added to the end of the section a proviso increasing the tax from $1.50 to $3.00 per barrel for the biennium ending June 30, 1971.

The 1971 amendment made the 1969 change permanent by increasing the tax specified at the beginning of the section from $1.50 to $3.00 and deleting the proviso added by the 1969 amendment.

4-330. (2815.33) **Purchase of beer by retailer—persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.** It shall be unlawful for such retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this act.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;

2. to 4. * * * [Same as parent volume.]

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition

thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act.

History: En. Sec. 31, Ch. 106, L. 1933; amd. Sec. 11, Ch. 46, Ex. L. 1933; amd. Sec. 7, Ch. 166, L. 1951; amd. Sec. 2, Ch. 240, L. 1971; amd. Sec. 3, Ch. 24, L. 1973.

Amendments

The 1971 amendment reduced the age specified in item 1 of the second paragraph from 21 to 19 years; and deleted "Indian" after "Any minor" near the beginning of the second sentence of the third paragraph.

The 1973 amendment reduced the age specified in item 1 of the second paragraph from nineteen to eighteen years.

4-337. (2815.40) **Railroad car or carrier's license—application for and issuance of license—inspection—sale to persons under eighteen (18) years of age or disorderly person.** Any person maintaining or operating any railroad car or train as a common carrier for the transportation of passengers, or any other person operating a buffet or dining car for any common carrier, desiring to sell beer under the provisions of this act, shall first apply to the board for a permit so to do, accompanying the application with the license fee herein prescribed. Upon being satisfied from said application or otherwise that the applicant is qualified under the provisions of this act, the board shall issue a license for the sale of beer by such person, which shall at all times be prominently displayed in the car, operated by the applicant, wherein beer or malt liquors are served. The board shall have the right at any time to make an inspection of the train or cars operated by any railway company in this state, to ascertain whether this act is being strictly complied with, and if not, the board is authorized and empowered to cancel such license, after which the sale of any beer or malt liquors by any such common carrier, or other person operating buffet or dining car for such common carrier, shall be unlawful and subject to the penalties herein prescribed. And it shall be unlawful for any such common carrier, or other person operating buffet or dining car for such common carrier, to sell beer or malt liquors to any person under the age of eighteen (18) years or who may appear to be in an intoxicated or disorderly condition.

History: En. Sec. 36, Ch. 106, L. 1933; amd. Sec. 3, Ch. 246, L. 1947; amd. Sec. 3, Ch. 240, L. 1971; amd. Sec. 4, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified near the end of the section from 21 to 19 years.

The 1973 amendment reduced the age specified near the end of the section from nineteen to eighteen years.

4-347. (2815.50) **Revenue to be paid to state treasurer—disposition of revenue.** Except as provided in section 4-347.1 of this act, all fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana Beer Act shall be paid over to the state treasurer on or before the tenth (10th) day of each and every month who shall deposit said funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969; amd. Sec. 3, Ch. 421, L. 1971.

Amendments

The 1969 amendment inserted "Except as provided in section 4 of this act."

The 1971 amendment substituted "section 4-347.1" for "section 4"; and made a minor change in style.

Separability Clause

Section 5 of Ch. 296, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

4-347.1. Revenue allocation. All revenue received from taxes on beer under sections 4-317 and 4-324, R.C.M. 1947, over and above one dollar and fifty cents ($1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

History: En. 4-347.1 by Sec. 4, Ch. 421, L. 1971.

Title of Act

An act amending sections 4-317, 4-324 and 4-347, R.C.M. 1947, and section 4, Chapter 296, Laws of 1969, to make the current beer barrelage tax permanent; providing for severability; repealing all acts and parts of acts in conflict herewith.

Separability Clause

Section 4 of Ch. 421, Laws 1971 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clause

Section 5 of Ch. 421, Laws 1971 repealed all acts and parts of acts in conflict therewith.

4-348. Repealed.

Repeal

Section 4-348 (Sec. 10, Ch. 14, L. 1941), the repealing clause, was repealed by Sec. 58, Ch. 100, Laws 1973.

4-354. (2815.57) **Effect when vote is against sale of beer.** If a majority of the votes cast are against the sale of beer the board of county commissioners must publish the result once a week for four (4) weeks in the newspapers in which the notices of election were published, and from the date of the election no further licenses to vend beer in the county shall be issued by the liquor control board, and after the publication of notice pro-

claiming the result of the election is against the sale of beer, all licenses then existing shall be canceled by the state liquor control board, and thereafter it shall be unlawful to sell any beer in any such county.

History: En. Sec. 54, Ch. 106, L. 1933; amd. Sec. 1, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "liquor control board" for "board of equalization" in two places.

CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY LICENSEES OF BOARD

Section
4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.
4-408.1. Fingerprints required of licensees.
4-408.2. Holders of security interests.
4-413. Persons to whom liquor may not be sold or given.
4-414. Hours for sale of liquor.
4-439. Penalty for violating act—revocation of license.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for

use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) * * * [Same as parent volume.]

(2) * * * [Same as parent volume.]

(3) Resort licenses. It is the intent and purpose of this act to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the board under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the board may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the board as hereinafter provided.

The board shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be promulgated within one hundred eighty (180) days after the passage and approval of this act. In addition to the other requirements of this act, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars ($500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean

lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the board shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the board.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the board prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.

Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.

When the board has accepted a plat and a given resort area has been determined, applications may then be filed with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed

premises have been met, setting forth such time limitations and requirements as the board may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars ($2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-407.1.

If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act.

History: En. Sec. 3, Ch. 84, L. 1937; amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 217, L. 1963; amd. Sec. 1, Ch. 322, L. 1971.

Amendments

The 1971 amendment added subsection (3) relating to issuance of resort liquor license; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 322, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

4-408.1. Fingerprints required of licensees. All applicants for a Montana retail liquor or beer license, including corporate officers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license.

History: En. Sec. 1, Ch. 487, L. 1973.

Title of Act

An act permitting submission of fingerprints in connection with retail liquor and beer licenses.

4-408.2. Holders of security interests. This provision shall also apply to all who file a security interest against such license except as to banks, savings and loan institutions, and licensed lending agencies.

History: En. Sec. 2, Ch. 487, L. 1973.

4-413. Persons to whom liquor may not be sold or given. No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine to:

1. Any person under the age of eighteen (18) years.

2. to 5. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 84, L. 1937; amd. Sec. 3, Ch. 221, L. 1939; amd. Sec. 1, Ch. 71, L. 1953; amd. Sec. 4, Ch. 240, L. 1971; amd. Sec. 5, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified in subdivision 1 from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivision 1 from nineteen to eighteen years.

4-414. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

(a) Sunday, from two A.M. to one P.M.;

(b) On any other day between two A.M. and eight A.M.;

provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

History: En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959; amd. Sec. 1, Ch. 296, L. 1973.

Amendments

The 1973 amendment deleted a clause (c) reading: "On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not on the day of any other election."

4-439. Penalty for violating act—revocation of license. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board. Further, if any person under the age of eighteen (18) is convicted of an offense under this act he shall be subject to a one hundred dollar ($100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this act that all such licensees display in a prominent place in his premises a placard as issued by the board stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this act.

Any person who invites a person under the age of eighteen (18) years into a public place where liquor is sold and treats, gives or purchases liquor for such person, or permits such person in a public place where liquor is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the liquor establishment, or his or her employee or employees, shall be guilty of a misdeameanor.

History: En. Sec. 38, Ch. 84, L. 1937; amd. Sec. 2, Ch. 226, L. 1947; amd. Sec. 1, Ch. 161, L. 1951; amd. Sec. 5, Ch. 240, L. 1971; amd. Sec. 6, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified throughout the section from 21 to 19 years, and made a minor change in style.

The 1973 amendment reduced the age specified throughout the section from nineteen to eighteen years.

CHAPTER 5—IDENTIFICATION CARDS

Section

4-502. Identification card—form.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed.

4-506. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder for an identification card.
4-510. Fee to be charged.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least eighteen (18) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No. .....; Issued at ..... Date .....
Birth Certificate issued at .....; Date of Birth.....
Draft Card issued at .....; Date of birth .....
Discharge Papers: Service .....; Issued at .....
Date of birth .....
Military Identification Card or Pass: Service .....;
Issued at ..... Date ..... Age Shown .....
Driver's License: Date .....; Issued at .....;
Age Shown .....

I hereby represent to ..... that I am over the age of eighteen (18) years, having been born on the ..... day of ....., 19....., at ....., and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment, for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

(Witness) ..... (Signature) .....
(Address) ..... (Address) .....

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955; amd. Sec. 16, Ch. 154, L. 1965; amd. Sec. 6, Ch. 240, L. 1971; amd. Sec. 7, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two places; and made a minor change in punctuation.

The 1973 amendment reduced the specified age from nineteen to eighteen years in two places.

4-504. License of licensee not to be revoked or suspended for selling to minor when identification card properly completed, signed and filed. The license of any licensee in possession of an identification card properly completed, signed and filed as provided in this act shall not be suspended or revoked for selling beer and/or liquor to a person under the age of

eighteen (18) years who has presented such identification card at the time of purchase and delivered the same for filing as herein provided.

History: En. Sec. 4, Ch. 107, L. 1955; amd. Sec. 7, Ch. 240, L. 1971; amd. Sec. 8, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified in the latter part of the section from 21 to 19 years.

The 1973 amendment reduced the age specified in the latter part of the section from nineteen to eighteen years.

4-506. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder for an identification card. All persons attaining the age of eighteen (18) years may apply to the county clerk and recorder of the county in which the applicant resides for an identification card which shall prima facie establish that the applicant has reached the age of eighteen (18) years.

History: En. Sec. 1, Ch. 190, L. 1957; amd. Sec. 8, Ch. 240, L. 1971; amd. Sec. 9, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two places.

The 1973 amendment reduced the specified age from nineteen to eighteen years in two places.

4-510. Fee to be charged. The county clerk and recorders shall charge and collect a fee of one dollar ($1) from the applicant at the time the application is prepared. This fee shall be transmitted to the Montana liquor control board along with the application and shall be used to defray the cost of administering and executing the provisions of this act. Any surplus shall revert to the general fund of the state of Montana.

History: En. Sec. 5, Ch. 190, L. 1957; amd. Sec. 1, Ch. 272, L. 1973.

Amendments

The 1973 amendment increased the fee from fifty cents to one dollar.

Effective Date

Section 2 of Ch. 272, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

TITLE 5—BANKS AND BANKING

Chapter
5. Miscellaneous regulatory provisions, 5-518, 5-523, 5-527.
6. State administration of banking, 5-607 to 5-614.
5-607 to 5-614.
9. Examination and supervision—state examiner's fund, 5-902, 5-908, 5-910.
10. General powers and limitations of banks, 5-1002.1, 5-1058 to 5-1062.

CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS

5-202. Presentation of articles to superintendent of banks, etc.

Due Process

Protestant bank has no statutory right to a hearing or to an adversary, trial-type hearing with an opportunity to examine and cross-examine witnesses or to elicit disclosure of confidential information from the superintendent of banks so that it might have an opportunity to answer in proceeding where superintendent of banks conditionally approves a state bank charter application based on confidential information. Miners & Merchants Bank v. Dowdall, — M —, 489 P 2d 1274 (Decision prior to enactment of sec. 5-612).

5-203. Superintendent of banks to approve or refuse application, etc.

Cross-References

Position of superintendent of banks abolished and functions transferred, sec. 82A-402 (1).

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section
5-518. Disposition of acquired stock.
5-523. Limitations on loans—liabilities—what included therein—reduction when excessive.
5-527. Interest not to exceed lawful rate—permissible charges on installment loans.

5-518. (6014.43) **Disposition of acquired stock.** No commercial or savings banks shall purchase or invest its capital or surplus, or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter, if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within one year after such purchase or acquisition, or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 39, Ch. 89, L. 1927; amd. Sec. 1, Ch. 115, L. 1973.

Amendments

The 1973 amendment added to the second sentence the final clause relating to unmarketable stock.

Effective Date

Section 2 of Ch. 115, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

5-523. (6014.48) **Limitations on loans—liabilities—what included therein—reduction when excessive.** The total loans to any person, copartnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and that portion of the liabilities of such firm, copartnership or unincorporated association for which a member thereof individually shall be legally responsible shall be included in the liabilities of the member in determining the foregoing limitations. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

History: En. Sec. 44, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973.

Amendments

The 1969 amendment inserted "to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or" in the second sentence of the first paragraph.

The 1973 amendment substituted "that portion of the liabilities of such firm, copartnership or unincorporated association for which a member thereof individually shall be legally responsible" in the first sentence of the second paragraph for "the liabilities of such firm, copartnership or unincorporated association"; added the second sentence to the second paragraph; and made a minor change in phraseology.

5-527. (6014.52) **Interest not to exceed lawful rate—permissible charges on installment loans.** No bank shall demand or receive for loans or dis-

counts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. On loans to be repaid in one or more deferred installments a bank may charge not to exceed the following schedule: On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11) per one hundred dollars ($100) per year; if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); if the principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000). Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments. A minimum charge of twenty dollars ($20) may be made with respect to any installment loan made by a bank. When an installment loan contract provides for payment other than in equal successive monthly installments the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts having due regard for the schedule of payments in the contract.

History: En. Sec. 48, Ch. 89, L. 1927; amd. Sec. 1, Ch. 239, L. 1969.

Amendments

The 1969 amendment added provisions relating to permissible charges on installment loans.

CHAPTER 6—STATE ADMINISTRATION OF BANKING

Section
5-607. State banking board—composition.
5-608. Board members appointed by governor—terms—vacancies.
5-609. Secretary of board—meetings of board—quorum—remuneration.
5-610. Powers of board.
5-611. Rules adopted by board—new banks.
5-612. Hearings—notice—intervenors.
5-613. Prehearing discovery.
5-614. Disqualification of board member.

5-601. (6014.59) State banking department—superintendent, etc.

Cross-References

Department abolished and functions transferred, sec. 82A-402(1).

5-602. (6014.60) State superintendent of banks.

Cross-References

Superintendent's position abolished and functions transferred, sec. 82A-402(1).

5-607. State banking board—composition. There is hereby created and established within the department of business regulation a state banking board. Said board shall be composed of seven (7) members, one (1) of whom shall be the director of business regulation, who shall be the chairman of

the board and shall act as its executive officer. The remaining six (6) members of the board shall be appointed with consideration being given banks of small, medium and large size and to geographical distribution and at least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of said six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3) shall be members of the public, none of whom shall be an officer, director or shareholder of any state or national bank.

History: En. Sec. 1, Ch. 420, L. 1973.

Title of Act

An act to create a state banking board within the department of business regulation and to prescribe its powers, duties and responsibilities.

5-608. Board members appointed by governor—terms—vacancies. The members of the state banking board shall be appointed by the governor. All members except the director of business regulation shall be appointed after the passage and approval of this act and their terms shall commence with the effective date of this act, two (2) for a term of one (1) year, two (2) for a term of two (2) years and two (2) for a term of three (3) years and thereafter their successors shall be appointed for terms of three (3) years so that their terms shall be overlapping, two (2) to be appointed each year. Any vacancies shall be filled by appointment for the unexpired period of the term involved. No member other than the director of business regulation shall serve for more than two (2) consecutive terms.

History: En. Sec. 2, Ch. 420, L. 1973.

Compiler's Notes

The approval date of Ch. 420, Laws 1973 was March 21, 1973.

5-609. Secretary of board—meetings of board—quorum—remuneration. The board shall elect from its members a secretary to serve at the pleasure of the board. In performing its functions the board shall have use of the offices, equipment and personnel of the department of business regulation as it requires. The board shall hold regular meetings each quarter at a fixed date and time at the office of the department of business regulation. Special meetings may be called at any time by the chairman upon three (3) days notice to the members. A quorum for all meetings shall be a majority of the board members and action may be taken by a majority of the quorum present at any meeting. The chairman shall have a voice but no vote in all meetings except to break a tie. Any board member except the chairman may be removed by the governor without cause in any case. The board members, except the chairman, shall be paid twenty-five dollars ($25) per day or any part thereof devoted to the performance of their duties, and actual and reasonable expenses incurred in the performance of their duties and mileage as provided by law to state officers. The costs and expenses of the board shall be legitimate charges of the department of business regulation.

History: En. Sec. 3, Ch. 420, L. 1973.

5-610. Powers of board. The state banking board shall have the following powers in addition to any others that hereafter may be granted to it by law:

(1) to make final determinations upon applications for charters for new banks, mergers, consolidations, and relocations of banks;

(2) to act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of business regulation as said duties and powers relate to banking.

History: En. Sec. 4, Ch. 420, L. 1973.

5-611. Rules adopted by board—new banks. The board shall adopt rules and regulations to the extent and in the manner as provided in the Montana Administrative Procedure Act [82-4201 to 82-4225]. In addition, the board shall, in the manner provided in said act and as expeditiously as possible, adopt rules as it deems necessary and proper to implement its duties and powers.

In particular, the board shall give priority to promulgation of rules concerning the chartering of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined. Such standards shall include the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity, and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest.

History: En. Sec. 5, Ch. 420, L. 1973.

5-612. Hearings—notice—intervenors. In addition to the requirements of the Montana Administrative Procedure Act [82-4201 to 82-4225], the following shall be required: A hearing shall be conducted upon all applications for new bank charters, and all provisions of the Administrative Procedure Act [82-4201 to 82-4225] relating to a contested case shall be followed, whether or not any protest to the application is filed. A notice of the filing of an application for a new bank charter shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line. A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice. Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal. All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

History: En. Sec. 6, Ch. 420, L. 1973.

5-613. Prehearing discovery. The board shall permit prehearing discovery procedures, including the taking of depositions and the production

of documents. In such discovery procedures, the rules of civil procedure for state courts shall furnish guidelines for these purposes. As soon as practicable, the board shall adopt rules regarding discovery procedures, but until this is accomplished, the foregoing shall apply.

In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

History: En. Sec. 7, Ch. 420, L. 1973.

5-614. Disqualification of board member. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved competitively or otherwise.

History: En. Sec. 8, Ch. 420, L. 1973.

Separability Clause

Section 9 of Ch. 420, Laws 1973 read "The provisions of this act shall not apply to any application filed prior to January 1, 1973."

CHAPTER 9—EXAMINATION AND SUPERVISION—STATE EXAMINER'S FUND

Section
5-902. Reports and records of superintendent.
5-908. Payments by banks, investment and trust companies.
5-910. Special examinations and fees.

5-902. (6014.76) **Reports and records of superintendent.** The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 72, Ch. 89, L. 1927; amd. Sec. 7, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to section 82-4002 for specific provisions relating to the contents, printing and distribution of the annual reports to the governor.

5-903 to 5-907. (6014.77 to 6014.81) **Repealed.**

Repeal

Sections 5-903 to 5-907 (Sec. 73, Ch. 89, L. 1927; Sec. 1, Ch. 167, L. 1929; Sec. 1, Ch. 195, L. 1945; Sec. 1, Ch. 48, L. 1953; Sec. 1, Ch. 49, L. 1953; Sec. 1, Ch. 50, L. 1953; Sec. 1, Ch. 138, L. 1959; Sec. 1, Ch. 139, L. 1959; Sec. 1, Ch. 159, L. 1959; Sec. 1, Ch. 186, L. 1959), relating to payments by local governments into the state treasury, were repealed by Sec. 6, Ch. 256, Laws 1971.

5-908. (6014.82) **Payments by banks, investment and trust companies.** For the credit of the general fund of the state, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the last day of June of each year, a supervision fee of four hundred dollars ($400). An examination fee of ten cents (10¢) for each one thousand dollars ($1000) of total assets as of the date of the examination shall be paid at the conclusion of the examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

5-910. (6014.84) **Special examinations and fees.** Special examinations may be made of any bank, trust company, investment company, building and loan association, or credit union when in the judgment of the superintendent of banks it shall be deemed necessary, and such special examination shall be charged for at the rate of one hundred dollars ($100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys so collected by the state examiner and ex officio superintendent of banks shall be paid to the state treasurer, for the credit of the general fund.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Repealing Clause

Section 6 of Ch. 256, Laws 1971 read "Sections 5-903, 5-904, 5-905, 5-906, 5-907, R.C.M. 1947, are repealed."

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(b).

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

Section

5-1002.1. National bank powers extended to state banks—department consent—regulations.
5-1058. Definitions.
5-1059. Power of commissioner.
5-1060. Powers of officers.
5-1061. Notice to commissioner.
5-1062. Effect of closing.

5-1002.1. National bank powers extended to state banks—department consent—regulations. With the consent of the department of business regulation any bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department of business regulation may prescribe, amend and repeal regulations affecting and controlling the exercise of the powers granted by this act, provided that such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

History: En. Sec. 1, Ch. 119, L. 1973.

Title of Act

An act granting to state banks the power to engage in any business or activity permitted to national banks with the consent of the department of business regulation.

5-1011. (6014.95) **Private banks subject to inspection by state examiner.**

Due Process

Protestant bank was afforded constitutional "right to be heard" where state superintendent of banks interviewed two officers of protestant giving them opportunity to state their views and thereafter the bank was given opportunity to present a detailed written protest opposing

charter application of a new bank and subsequently in district court hearing on motion for summary judgment, protestant bank had an opportunity to present its evidence in opposing proponent's charter application. Miners & Merchants Bank v. Dowdall, — M —, 489 P 2d 1274.

5-1012. (6014.96) **Information obtained by state examiner, etc.**

Duty Not to Reveal Information

The state superintendent of banks is not required to reveal confidential information received during the course of his investigation of an application for a bank charter. Miners & Merchants Bank v. Dowdall, — M —, 489 P 2d 1274.

Purpose of Section

The purpose of this section is to ensure the securing of necessary and pertinent information by the superintendent of banks and discharging of his official duties and such purpose is reasonable. Miners & Merchants Bank v. Dowdall, — M —, 489 P 2d 1274.

Scope and Nature of Information

This section requires confidentiality of information secured in determination of bank charter applications and does not confine it to information required in the supervision, audit and examination of existing banks. Miners & Merchants Bank v. Dowdall, — M —, 489 P 2d 1274.

5-1058. Definitions. As used in this act, unless the context otherwise requires:

(1) "Commissioner" means the officer of this state designated by law to exercise supervision over banks, and any other person lawfully exercising such powers.

(2) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions hereof are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(3) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of this act or, in the absence of any such designation or of the officer or officers so designated, the president or any other officer currently in charge of the bank or of the office or offices in question.

(4) "Office" means any place at which a bank transacts business or conducts operations related to its business.

(5) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

History: En. Sec. 1, Ch. 32, L. 1971.

Title of Act

An act to permit banks to suspend business during an emergency and on any day or days proclaimed as a day or days of mourning, rejoicing, or other special observance and amending section 19-107, R.C.M. 1947.

5-1059. Power of commissioner. Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part or parts of this state, he may, by proclamation, authorize banks located in the affected area or areas to close any or all of their offices. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, he may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: En. Sec. 2, Ch. 32, L. 1971.

5-1060. Powers of officers. A. Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a bank's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the commissioner has not issued and does not issue a proclamation of emergency. The office or offices so closed shall remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; however, in no case shall such office or offices remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the commissioner.

B. The officers of a bank may close any one or more or all of the bank's offices on any day or days designated, by proclamation of the president of the United States or the governor of this state, as a day or days of mourning, rejoicing, or other special observance.

History: En. Sec. 3, Ch. 32, L. 1971.

5-1061. Notice to commissioner. A bank closing an office or offices pursuant to the authority granted under section 3 (A) [5-1060 (A)] of this act shall give as prompt notice of its action as conditions will permit and by any means available, to the commissioner, and in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971.

5-1062. Effect of closing. Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under this act shall be, with respect to such bank or, if not all of its offices are closed, then with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director,

officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this act.

The provisions of this act shall be construed and applied as being in addition to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

5-1124. (6014.154) Repealed.

Repeal

Section 5-1124 (Sec. 1, Ch. 129, L. 1931), relating to maintenance of offices of consolidated banks, was repealed by Sec. 1, Ch. 205, Laws 1969. Section 2 of the repealing act provided that the repeal did not affect any transaction, proceeding or application pending or consummated on or prior to effective date of repeal.

CHAPTER 14—UNIFORM COMMON TRUST ACT

5-1401. Common trust fund authorized.

NOTE.—Uniform State Law. The "Uniform Common Trust Fund Act" has also been adopted in Alaska and Massachusetts.

TITLE 6—BONDS AND UNDERTAKINGS

CHAPTER 2—OFFICIAL BONDS OF COUNTY OFFICERS

6-205. State examiner to determine adequacy of amount.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(c).

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

6-402. (5668.42) Notice to contractor of furnishing provender, etc.

Raising Lack of Notice as Defense

In action by materialman against general contractor for material supplied subcontractor, general contractor could not raise affirmative defense that statutory notice was not given for first time upon submitting proposed findings of fact and conclusions of law where materialman alleged that he had complied with all conditions precedent to bringing the suit and general contractor entered a general denial since general denial did not put notice in issue. Treasure State Industries, Inc. v. Leigland, 151 M 288, 443 P 2d 22.

Waiver of Notice

In an action by materialman against general contractor for materials supplied subcontractor, general contractor waived right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to subcontractor for the job and consented thereto. Treasure State Industries, Inc. v. Leigland, 151 M 288, 443 P 2d 22.

CHAPTER 6—OFFICIAL BONDS OF CITY OR TOWN OFFICERS AND EMPLOYEES

6-603. Determination of adequacy of bond by state examiner.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(d).

TITLE 7—BUILDING AND LOAN ASSOCIATIONS

Chapter
1. Laws regulating the operation of building and loan associations, 7-122.

CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section
7-122. Taxation of associations.

7-106. (6355.6) **Capital stock requirements, etc.**

Cross-References

Position of superintendent of banks abolished and functions transferred, sec. 82A-402 (1).

7-119. (6355.18) **Employment of agents, etc.**

Cross-References

Position of superintendent of banks abolished and functions transferred, sec. 82A-402 (1).

7-122. (6355.21) **Taxation of associations.** Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of every such association shall furnish to the department of revenue or its agent in the county in which the principal office of such association is located, within five (5) days after demand therefor, a condensed statement verified by his oath, of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such secretary shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or the department or its agent may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to

furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by this act shall be subject to taxation in no other way.

History: En. Sec. 20, Ch. 57, L. 1927; amd. Sec. 1, Ch. 62, L. 1929; amd. Sec. 2, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor of the county" throughout the section to implement Article VIII, section 3 of the 1972 Constitution.

TITLE 8—CARRIERS AND CARRIAGE

Chapter

1. Motor carriers—license and regulation, 8-101, 8-101.1, 8-101.2, 8-102 to 8-103.3, 8-104.4, 8-104.5, 8-107.1, 8-107.2, 8-110, 8-111, 8-111.1, 8-116, 8-118, 8-119, 8-126, 8-127, 8-131.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

Section

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8-101. (3847.1) **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) to (e). * * * [Same as parent volume.]

(f) The term "motor vehicle" shall include all vehicles or machines, motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state, and any trailer, semitrailer, dollie or other vehicle drawn thereby.

(g). * * * [Same as parent volume.]

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of agricultural commodities (not including manu-

factured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools, or in transportation movements related to school activities which are sponsored or supervised by school authorities, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or within the commercial areas thereof as determined by the board, or the transportation of newspapers, newspaper supplements, periodicals or magazines, or those tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked or disabled vehicles or while such tow trucks and wreckers are rendering assistance to abandoned, wrecked or disabled vehicles, or ambulances.

(i) to (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 168, and once by Ch. 174. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made in both amendments.

Amendments

The 1969 amendment added "or the transportation of newspapers * * * or ambulances" at the end of subdivision (h).

The 1971 amendment deleted "ordinary livestock or" before "agricultural commodities" near the beginning of the proviso to subdivision (h); and made a minor change in style.

Chapter 168, Laws of 1973, substituted "pupils or other students enrolled in classes" for "school children" in the proviso to subdivision (h); and inserted "or in transportation movements related to school activities which are sponsored or supervised by school authorities" in the proviso to subdivision (h).

Chapter 174, Laws of 1973, substituted "machines, motor trucks, tractors or other self-propelled vehicles" in subdivision (f) for "machines propelled by any power other than muscular"; added "and any trailer, semitrailer, dollie or other vehicle drawn thereby" at the end of subdivision (f); and made minor changes in phraseology.

Effective Dates

Section 2 of Ch. 168, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

Section 2 of Ch. 174, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

Constitutionality

Trial court erred in granting defendant's motion to dismiss where complaint alleged that certain portions of this act violated constitutions of state and United States since summary procedure should not be used in cases involving important public issues where any fact is in dispute unless trial judge is satisfied that evidence is sufficient to give him the necessary background of knowledge. Garrett Freightlines, Inc. v. Montana Railroad & Public Service Commission, 153 M 380, 457 P 2d 469.

8-101.1. Transportation of livestock by farmers and ranchers exempt. The provisions of this act shall not apply to the transportation of live-

stock by motor carrier by a bona fide farmer, rancher, or raiser of livestock in his own vehicle or vehicles, or when such farmer, rancher, or raiser of livestock provides transportation for the livestock of another farmer, rancher, or raiser of livestock between farm and farm, ranch and ranch, pasture and pasture, or to a point.

History: En. Sec. 2, Ch. 275, L. 1971.

8-101.2. Certificate required for commercial transportation of livestock —exemption. No person, firm, corporation, association or its or their officers, agents, employees, or servants, shall operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire, without having first obtained a class B certificate of public convenience and necessity from the board. Provided, however, any commercial transportation movement of livestock in any motor vehicle having a cargo bed of twenty-two (22) feet in length or less, shall be deemed exempt from the provisions of this act. Provided, however, if any such person, firm, corporation, association or its or their officers, agents, employees, or servants, or its or their legal predecessor in interest, was in bona fide operation as a motor carrier, transporting livestock commercially, on July 1, 1970, over the territory for which application is made and has so operated since that time, or, if engaged in a seasonal service, was in bona fide operation during the season ordinarily covered during the year 1970, and has so operated since that time, upon such proof thereof as may be required by the board, the board shall issue a class B certificate of public convenience and necessity authorizing commercial transportation of livestock throughout the state without a hearing therefor, if application for such certificate is made to the board as provided in section 8-109 of this code, within one hundred eighty (180) days after July 1, 1971. Otherwise, the application for a certificate shall be granted or denied by the board as provided for in section 8-111 of this code. Nothing herein provided shall relieve the holder of a class B certificate authorizing the commercial transportation for hire of livestock as provided for herein from any obligation, duty, fee or other requirement of the Motor Carrier Act.

History: En. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973.

Amendments

The 1973 amendment inserted the proviso constituting the second sentence.

8-102. (3847.2) **Classification of motor carriers—operation according to provisions of act required.** (a) Motor carriers are hereby divided into three (3) classes for the purposes of this act, to be known as:

Class A motor carriers,
Class B motor carriers,
Class C motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon

a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking. Such class C motor carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons shall do so under six (6) contracts, charters, agreements or undertakings or less annually. Every class C motor carrier providing such transportation services by means of more than six (6) contracts, charters, agreements or undertakings shall be deemed to be providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C motor carrier certificate. All class C motor carriers must annually submit to this commission the names and addresses of all persons, firms, corporations or other legal entity with whom the said class C carrier has executed a contract, charter, agreement or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons.

(b). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 184, L. 1931; amd. Sec. 1, Ch. 172, L. 1973.

Amendments

The 1973 amendment added the second, third and fourth sentences, relating to class C carriers, to the final paragraph of subdivision (a).

Effective Date

Section 2 of Ch. 172, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

8-103. (3847.3) **Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor.** (a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and nondiscriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. To fully secure adequate motor transportation facilities for all users of such service, and to secure the public advantages thereof, the board shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 184, L. 1931; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971.

Amendments

The 1971 amendment inserted the second and third sentences in subsection (a).

Cross-References

Board of railroad commissioners abolished and functions transferred, sec. 82A-1703.

Duties of Board

Under this section and section 8-112 board of railroad commissioners is authorized, and has duty, to supervise every motor carrier in state and may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. Walter v. Board of Railroad Commrs., 153 M 384, 457 P 2d 479.

8-103.1. Leasing of power equipment. All class A, B and C carriers subject to the jurisdiction of the board of railroad commissioners may lease power equipment for the purpose of performing transportation movements within the state of Montana. The leasing of such power units must be in writing and effective only upon specific approval of the board. Movement of such leased units without prior approval of the board is prohibited.

All leases must contain (1) the full names and addresses of negotiating parties, (2) a complete description of each vehicle involved, (3) provision that the sole possession, responsibility, control and direction of each vehicle and its driver resides with the lessee for the entire term of the lease, (4) provision that the lessee assumes full responsibility for all regulatory fees, (5) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined, (6) the renewal conditions of the lease, if any, and (7) the term length of the lease.

A copy of the lease, certified by the board, must be maintained in each leased vehicle at all times.

Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor, and lessee, and the certificate number under which the power unit is operating. The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: En. 8-103.1 by Sec. 1, Ch. 105, L. 1969.

Title of Act

An act providing that all authorized carriers within the state may lease power equipment for the purpose of performing transportation movements, providing further that the leasing of such power units must be in writing and effective only upon specific approval of the board, setting forth the provisions required in the lease, providing that a copy of the lease, approved by the board, be maintained in each leased vehicle, providing for proper decals on each leased vehicle, leasing of power units by an authorized carrier to a noncertified carrier prohibited.

8-103.2. Interchange of equipment. Common carriers authorized by the board may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the board by the carriers affected. To be approved by the board the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized such equipment shall be operated only by the certificate holder over whose route such equipment is being operated. Interchange agreements between contract carriers, class C, is prohibited.

History: En. 8-103.2 by Sec. 1, Ch. 106, L. 1969.

Title of Act

An act providing for authorized common carriers to enter into interchange

agreements with other authorized common carriers, providing for joint applications for such agreements, providing that the interchange must take place at a fixed terminal where the carriers' routes intersect, providing further for shipping data to be in the possession of the operator of the interchanged equipment, interchange agreements between contract carriers prohibited.

8-103.3. Lease of Montana railroad commission certificate. An authorized carrier operating within the state of Montana may lease its certificate, or any integral segment thereof, to another carrier only by approval of the board. The contract or lease, under which the certificate is leased, must be in writing and approved by the board prior to any operation under the certificate. The contract or lease must specify: (a) the period for which a certificate is to be leased, which shall not be less than (30) days; (b) the compensation to be paid; (c) the time or date upon which the lease will commence and terminate; (d) and the signatures of the parties thereto. Operation under the certificate is prohibited until approved by the board in writing. During the period of the contract or lease transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner, lessor, is prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969.

Title of Act

An act providing that authorized carriers within the state may lease operating certificates, or any integral segment thereof, upon board approval; providing that the contract or lease must be in writing and specifying the provisions contained therein; providing that transportation movements under the certificate be prohibited until approved by the board in writing. Transportation during the term of the contract or lease to be performed by the entity contracting for or leasing certificate; transportation during the term of the contract or lease by the owner, lessor, is prohibited.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the board from authorizing different rates or schedules of rates for service between the same places, or between different points of origin and/or destination within the same places, when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscrimina-

tory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided, however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971.

Amendments

The 1971 amendment added the second sentence to the first paragraph and made a minor change in punctuation.

8-104.5. Changes, revisions of rate schedules, how made. No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the motor carrier as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.

Upon its own initiative, or upon the complaint of any interested party filed with the board within twenty (20) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred eighty (180) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same

shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred eighty (180) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973.

Amendments

The 1973 amendment added the last three sentences to the first paragraph; extended the filing time specified near the beginning of the second paragraph from fifteen to twenty days; extended the period for which the board may suspend the operation of a rate, fare, charge or classification from one hundred and twenty days to one hundred and eighty days; substituted "by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent," for "by the board of any complaint filed by any interested party to any proposed tariff change or revision" in the middle of the second paragraph; and extended the time for a hearing on the complaint from one hundred and twenty days to one hundred and eighty days from the date upon which the suspension was ordered.

Effective Date

Section 2 of Ch. 235, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

8-107.1. Suspension of intrastate operating authority by petition. Every motor carrier as defined within this act, may petition this commission in writing to suspend its intrastate operating authority for a period not to exceed six (6) months. An additional six (6) months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity, or other showing of matters affecting motor carrier transportation.

History: En. 8-107.1 by Sec. 1, Ch. 173, L. 1973.

Title of Act

An act providing that every motor carrier may petition the commission to suspend its intrastate operating authority for a period not to exceed six (6) months; providing that an additional six (6) months' suspension may be requested and granted, but no other; that such suspension be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation; and providing an effective date.

Effective Date

Section 2 of Ch. 173, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 6, 1973.

8-107.2. Suspension creates presumption of absence of public convenience and necessity. The suspension of any intrastate operating authority of any carrier, as provided for in the preceding section, for a period of twelve (12) consecutive months shall be deemed to establish a prima facie presumption of absence of public convenience and necessity. If, after notice and hearing, the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

History: En. 8-107.2 by Sec. 1, Ch. 236, L. 1973.

Title of Act

An act providing that the suspension of any intrastate operating authority as pro-

vided in section 8-107.1, R. C. M. 1947, for a period of twelve (12) consecutive months is a prima facie presumption of absence of public convenience and necessity; providing that if, after notice and hearing, the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate; and providing an effective date.

Effective Date

Section 2 of Ch. 236, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

8-110. (3847.10) **Certificate required of class C motor carriers—contents of application—fee.** (1) (a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms and conditions of a United States government contract, agency or department thereof, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) and (c) * * * [Same as parent volume.]

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government, agency or department thereof, shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R. C. M., 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government contract may be issued by the board upon receipt of an executed copy of the United States government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government contract, is authorized only for the duration of the United States government contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government contract.

History: En. Sec. 10, Ch. 184, L. 1931; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971.

Amendments

The 1971 amendment designated the former language as subsection (1); inserted "except any class C motor carrier operating pursuant to the terms and conditions of the United States government contract, agency or department thereof" in subdivision (1)(a); and added subsection (2).

8-111. (3847.11) **Hearing to consider applications—notice—matters considered—manner of conducting hearings.** Upon the filing of such application by a class A or class B or class C motor carrier, except a class

C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer testimony for or against the granting of such certificate. The submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corporation or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons. Such contracts must be in writing, executed by the parties, and submitted to this commission for examination. The contracting parties must appear and offer testimony in support of the applicant. If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the

purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, together with a statement in writing of the reasons therefor which statement must be included in such finding, or order or decision, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, ch. 69, L. 1971; amd. Sec. 1, ch. 339, L. 1973.

Amendments

The 1971 amendment inserted "except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof" in the first sentence of the first paragraph.

The 1973 amendment inserted the third, fourth and fifth sentences in the first paragraph.

Effective Date

Section 2 of Ch. 339, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

8-111.1. Time for hearing and issuance of finding, order or decision. All applications for certificates of public convenience and necessity as class A, class B, or class C carriers, except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department, filed by motor carriers before the board of railroad commissioners must be set for hearing at a date and time certain, which said date of hearing must be not more than sixty (60) days after the date of filing of said application before said board, and the board must issue its finding, order or decision on said application and the evidence presented in support thereof at the time of said hearing within ninety (90) days from and after the said date of the filing of said application.

History: En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971.

Amendments

The 1971 amendment inserted "except class C carriers operating pursuant to the terms and conditions of a United States government contract, agency or department" near the beginning of the section.

Effective Date

Section 4 of Ch. 69, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

8-112. (3847.12) **Authorization of board required for transfer of privilege, etc.**

Attachment of Terms and Conditions

Under this section and section 8-103 board of railroad commissioners is authorized, and has duty, to administratively supervise every motor carrier in state and may, in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. Walter v. Board of Railroad Commrs., 153 M 384, 457 P 2d 479.

8-116. (3847.16) **Annual fee for motor carriers—fee for seasonal operators—compliance required of motor carriers operating in more than one state—revocation of certificate for failure to pay fees—lien of fees and charges.** (a) In addition to all of the licenses, fees or taxes imposed upon motor vehicles in this state, and in consideration of the use of the public highways of this state, every motor carrier, as defined in this act, shall, at the time of the issuance of a certificate and annually thereafter,

on or between the first day of January and the fifteenth day of January, of each calendar year, pay to the public service commission of the state of Montana the sum of five dollars ($5), for every motor vehicle operated by the carrier over or upon the public highways of this state.

Provided, that a motor carrier engaged in seasonal operations only, where its said operations do not extend continuously over a period of not to exceed six (6) months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half (½) of the compensation and fees herein provided, and, provided further, that the compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

(b) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this act relating to the payment of compensation and to the making of annual or special reports or statements herein required, and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the commission as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

(c) Upon the failure of any motor carrier to pay such compensation, when due, the commission may in its discretion revoke the carrier's certificate or privilege and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(d). * * * [Same as parent volume.]

History: En. Sec. 16, ch. 184, L. 1931; amd. Sec. 1, ch. 473, L. 1973.

Amendments

The 1973 amendment, near the end of the first paragraph in subsection (a), changed the time for the issuance of the certificate from the period between the first and fifteenth of July to the period between the first and fifteenth of January; reduced the fee from ten dollars to five dollars near the end of the first paragraph in subsection (a); and substituted references to the public service commission for the board of railroad commissioners throughout the section.

Effective Date

Section 2 of Ch. 473, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 27, 1973.

DECISIONS UNDER FORMER LAW

Constitutionality

The imposition of the ten-dollar fee on motor vehicles engaged in interstate commerce conflicts with federal law (P.L. 89-170) and regulations thereunder; the state may impose a fee no greater than the five dollars per vehicle permitted by federal regulations. State ex rel. Sammons Trucking Inc. v. Boedecker, — M —, 492 P 2d 919, distinguishing Aero Mayflower Transit Co. v. Board of Railroad Commrs., 332 US 495, 92 L Ed 99, 68 S Ct 167.

8-118. (3847.18) **Records of motor carriers to be open for inspection by board—system of accounts to be prescribed—reports required.** All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transporta-

tion conducted by such motor carrier, shall at all times be subject to examination by the board or by any authorized agent or employee of the board. The board shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, in so far as possible. On or before the thirty-first day of March of each year, every motor carrier authorized to engage in such business shall file with the board a report, under oath. In addition to such annual reports every motor carrier shall prepare and file with the board, at the time or times and in the form to be prescribed by the board, annual reports, special reports and statements giving to the board such information as it shall require in order to perform its duties under this act.

History: En. Sec. 18, ch. 184, L. 1931; amd. Sec. 1, ch. 232, L. 1973.

Amendments

The 1973 amendment changed the date for filing of a report with the board from July 15 to March 31.

Effective Date

Section 2 of Ch. 232, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

8-119. (3847.19) **Penalties for violations.** Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall:

(a) be subject to a civil penalty to be collected and deposited to the general fund by the board after notice and hearing in an amount not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for the first offense, and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense; or

(b) be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for the first offense, and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971.

Amendments

The 1971 amendment inserted subdivision (a); designated the language in the latter part of the former section as subdivision (b); and inserted "for the first offense, and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense" in subdivision (b).

8-126. (3847.26) **Fees required for filing various documents.** The board of railroad commissioners and the public service commission of Montana shall, except as otherwise provided by law, require and receive fees before filing any annual reports, tariffs, schedules and supplements thereof and shall require and receive fees for all copies of orders, documents, classifications, blank forms and other instruments prepared by it or on file in the office thereof, except as otherwise provided by law to be furnished free of charge, in accordance with the following schedule:

Filing annual reports, each	$ 5.00
Filing tariffs, time schedules and supplements thereto, each	2.00
For issuing certificates of public convenience and necessity to motor carriers, each	2.00
Classification for public utilities, each	1.50
Classification for motor carriers, each	.50
For copy of rules and regulations for motor carriers and blank forms of annual reports for utilities and common carriers	Cost

Nothing herein contained shall be construed to require or authorize the board of railroad commissioners or the public service commission to collect fees for the filing of any annual reports, tariffs, schedules and supplements thereof which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971.

Amendments

The 1971 amendment changed the fee for a copy of rules and regulations for motor carriers from 25 cents to cost.

8-127. (3847.27) **Additional fees covering motor carriers.** In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the board of railroad commissioners, shall between the first and fifteenth days of January, April, July and October of each year, file with the board of railroad commissioners a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the board a fee of five hundred seventy-five thousandths (.575) of one (1) per cent of the amount of such gross operating revenue; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars ($30) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor

Carrier Act shall be fifteen dollars ($15); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.

History: En. Sec. 2, Ch. 100, L. 1935; amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, Ch. 162, L. 1951; amd. Sec. 1, Ch. 6, Ex. L. 1969; amd. Sec. 1, ch. 383, L. 1971.

Amendments

The 1969 amendment inserted a proviso increasing the fee from .5% to .575% for the biennium commencing April 1, 1969.

The 1971 amendment made the increase to .575% permanent and made minor changes in style.

Repealing Clause

Section 2 of Ch. 6, Ex. Laws 1969 read "Section 8-128, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 6, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 383, Laws 1971 read "This act is effective on April 1, 1971."

8-128. (3847.28) **Repealed.**

Repeal

Section 8-128 (Sec. 3, Ch. 100, L. 1935), relating to the disposition of fees collected from motor carriers, was repealed by Sec. 2, Ch. 6, Ex. Laws 1969.

8-130. (3847.29) **Repealed.**

Repeal

Section 8-130 (Sec. 2, Ch. 133, L. 1943), granting the board authority to grant temporary certificates, was repealed by Sec. 2, Ch. 148, Laws 1971.

8-131. Temporary authority for service—duration—extension. To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the public service commission may, in its discretion, upon affidavits or such other evidence as it may deem sufficient, and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the board may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the board shall specify, but for not more than ninety (90) days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the board without hearings or other proceedings, but in no case shall a grant of temporary authority, with extensions, exceed an aggregate of one hundred twenty (120) days. Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of the Motor Carrier Act and to the rules, regulations and requirements of the board thereunder.

History: En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973.

Title of Act

An act authorizing the board of railroad commissioners of the state of Mon-

tana to grant temporary motor carrier authority in cases of immediate and urgent need; prescribing the maximum periods thereof; and repealing section 8-130 of the Revised Codes of Montana, 1947.

Amendments

The 1973 amendment substituted "public service commission" for "board of railroad commissioners"; and inserted the second and third sentences.

Effective Date

Section 2 of Ch. 231, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

Repealing Clause

Section 2 of Ch. 148, Laws 1971 read "Section 8-130, R.C.M., 1947, is hereby repealed."

CHAPTER 2—PIPELINE CARRIERS OF OIL—REGULATION

8-204. (3851) Establishment of rates—hearing—complaints.

Cross-References

Board of railroad commissioners abolished and functions transferred, sec. 82A-1703.

TITLE 10—CHILDREN AND CHILD WELFARE

Chapter
3. Apprenticing of minors, 10-307.
5. Dependent and neglected children—proceedings for protection, 10-501, 10-524, 10-525.
6. Juvenile courts and proceedings against juvenile delinquents, 10-602, 10-603, 10-604.1, 10-605.1, 10-607, 10-608.1, 10-610, 10-611, 10-613, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630.
8. Day care facilities for children, 10-802.1.
9. Reports of child neglect or abuse, 10-901 to 10-903.
11. District youth guidance homes, 10-1101 to 10-1111.

CHAPTER 3—APPRENTICING OF MINORS

Section
10-307. Other conditions of indenture.

10-307. (5896) **Other conditions of indenture.** Every indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to attend school under the compulsory attendance provisions of Title 75, R.C.M., 1947.

History: En. Sec. 366, Civ. C. 1895; re-en. Sec. 3801, Rev. C. 1907; re-en. Sec. 5896, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1971.

Amendments

The 1971 amendment substituted "attend school under the compulsory attendance provisions of Title 75, R.C.M., 1947" for "be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture" at the end of the section; and made a minor change in phraseology.

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN—PROCEEDINGS FOR PROTECTION

Section
10-501. Dependent and neglected children—definition.
10-524. Payment for board, clothing, personal needs, and room of dependent and neglected children—reimbursement by county.
10-525. Recovery from parents—division between state and county.

10-501. (10465) **Dependent and neglected children—definition.** For the purpose of this act, the words "dependent child" or "neglected child" shall mean any child of the age of seventeen (17) years, or under that age, who is dependent upon the public for support, and who is destitute, homeless, or dependent, or who has no proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill-fame, or in any house of prostitution, or whose home, by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or other person in whose care it may be, is an unfit place for such child, or whose environment is such as to warrant the state, in the interest of the child, to assume its guardianship or support.

History: En. Sec. 1, Ch. 92, L. 1907; Sec. 7829, Rev. C. 1907; re-en. Sec. 10465, R. C. M. 1921; amd. Sec. 1, Ch. 407, L. 1973.

Amendments

The 1973 amendment increased the maximum age of a dependent or neglected child from sixteen to seventeen years.

Unfit Parents

Evidence of mother's use of welfare funds to supply her alcoholic needs, lack of medical care for her children, threats to kill children and other failures to provide properly for children within funds allocated, warranted finding that children were neglected and entry of order committing them to custody of state. In re Corneliusen, — M —, 494 P 2d 908.

Child was properly found dependent and neglected based on mother's declaration in waiver and consent to adoption instrument that she could not provide parental care or guidance and could not perform duties of a parent. Application of Hendrickson, — M —, 496 P 2d 1115.

10-503. (10467) Application to courts, etc.

Residence of Petitioner

Where child was taken from Indian reservation and abandoned outside the reservation, district court for county where found could take jurisdiction and provide for child despite the fact that the mother remained on the reservation and committed no acts of neglect outside the reservation. In re Cantrell, — M —, 495 P 2d 179.

10-505. State department of public welfare, etc.

Cross-References

Department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

10-524. Payment for board, clothing, personal needs, and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the department of public welfare for placing dependent and neglected children in approved family foster homes or licensed private institutions, it shall be the duty of the state department to pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board, clothing, personal needs, and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the state department within twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971.

Amendments

The 1971 amendment inserted "clothing, personal needs" near the end of the first paragraph.

10-525. Recovery from parents—division between state and county. In the event any recovery is made from the parent or parents of children for whom board, clothing, personal needs and room has been paid by the state and county any amount so recovered shall be divided equally between the state department and the county of residence of such child or children.

History: En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971.

Amendments

The 1971 amendment inserted "clothing, personal needs."

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section
10-602. Definitions.
10-603. Jurisdiction.
10-604.1. Right to jury trial—drawing the jury.
10-605.1. Preliminary inquiry—disposition—petition.

10-607. Service of citation.
10-608.1. Taking child into custody—release—holding child until hearing—notification of apprehension.
10-610. Transfer from other courts.
10-611. Hearing—judgment.
10-613. Modification of judgment.
10-622. Probation officers—appointments—removal—salaries.
10-623. Duties and powers of the probation department.
10-625. Physical and mental examinations and treatment.
10-626. Place of detention.
10-628. Juvenile court committee.
10-630. Appeals.

10-602. Definitions. (1). * * * [Same as parent volume.]

(2) The words "delinquent child" include:

(a) * * * [Same as parent volume.]

(b) A child who has violated any law of the state.

(c) to (e). * * * [Same as parent volume.]

(f) A child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor, or any other driving infractions that show the child to be lacking parental supervision or a disrespect for the traffic laws of this state.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963; amd. Sec. 1, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in subdivision (2) (b), deleted a proviso stating that a child over sixteen should be prosecuted as an adult for commission or attempted commission of enumerated felonies; and in subdivision (2) (f), added "or any other driving infractions * * * of this state."

Involuntary Manslaughter

Conviction of involuntary manslaughter, arising from driving of automobile on public highway while intoxicated, was proper notwithstanding defendant's contention that since he was a juvenile and "delinquent child" within meaning of Juvenile Code, he could be punished only civilly for his acts and not criminally. State v. Medicine Bull, 152 M 34, 445 P 2d 916.

10-603. Jurisdiction. The district courts of the several counties of this state shall have jurisdiction in all cases coming within the terms and provisions of this act. It is provided that the district court shall be called the juvenile court when acting under the juvenile court laws.

The juvenile court shall have exclusive original jurisdiction in proceedings:

(a) concerning any child who is delinquent;

(b) concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

In traffic matters involving persons under twenty-one (21) years of age justice of the peace and police courts or such other courts as are designated by the legislature shall have concurrent jurisdiction as provided in section 32-21-163, R. C. M. 1947:

(c) when the juvenile court has jurisdiction of any child sixteen (16) years of age, or over, who is accused of committing or the attempt to commit murder, manslaughter, arson in the first or second degree, assault

in the first or second degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape under the circumstances specified in subdivisions 3 and 4 of section 94-4101, R. C. M. 1947, then the county attorney may request the juvenile court to be permitted to file an information against the juvenile in district court, or, when the facts warrant, the juvenile judge may order the county attorney to proceed against the juvenile in district court on an information.

Before making such order the juvenile judge must hear the matter by an informal preliminary hearing to determine first, if there is probable cause to believe the juvenile has committed the felony, and, second, to determine whether under the circumstances it appears necessary for the best interest of the state that the juvenile be held to answer the information in district court.

After the information is filed in district court that court shall have full jurisdiction to proceed against the juvenile and shall proceed against him in the same manner as if he were an adult.

If the juvenile is found guilty in district court and is sentenced to the state prison, his commitment shall be to the department of institutions to be by them confined in whatever institution to them seems most proper;

(d) when jurisdiction shall have been obtained by the juvenile court in the case of any child, such jurisdiction shall continue until the child becomes twenty-one (21) years of age unless the child is ordered committed to a state custodial or correctional institution or to the state department of institutions;

(e) the county where a child is a resident shall have primary jurisdiction over any child charged with being a juvenile delinquent and the juvenile court of that county shall assume the handling of the cause. In the case of a juvenile sixteen (16) years of age or over who is accused of one of the serious offenses listed in subsection (c) of this section, the juvenile courts in the county where the offense occurred shall serve as the preliminary hearing court and if the juvenile is to be tried in district court the charge shall be filed and the trial held in the district court of the county where the offense occurred, otherwise the matter shall be transferred to the county where the child is a resident.

History: En. Sec. 3, Ch. 227, L. 1943; amd. Sec. 1, Ch. 123, L. 1945; amd. Sec. 2, Ch. 276, L. 1947; amd. Sec. 1, Ch. 124, L. 1957; amd. Sec. 2, Ch. 262, L. 1969.

Amendments

The 1969 amendment deleted "other than those laws relating to the commission of or attempt to commit the criminal offenses mentioned in subdivision (2) (b) of section 10-602" after "state" and made other minor changes in phraseology in subdivision (b); deleted provisions of subdivision (c) as follows: "concerning parents who willfully and knowingly fail to provide their children with proper food, clothing, medical attention, and opportunity to attend school; deleted a provision relating to right to trial by jury, and added the provisions of subdivisions (c) to (e), inclusive.

10-604. Repealed.

Repeal

Section 10-604 (Sec. 1, Ch. 41, L. 1945) relating to the trial of juvenile cases by a special jury was repealed by Sec. 16, Ch. 262, Laws 1969.

10-604.1. Right to jury trial—drawing the jury. The juvenile in any case to be heard on a written petition charging delinquency shall have

the right to demand a jury trial and shall have the right to be represented by counsel. The rights are deemed waived if not exercised. When a jury trial is required in a juvenile case, it may be held before the regular trial panel. However, if the regular panel is not in attendance, the court may draw a jury from jury box No. 3. Jury trials demanded in juvenile courts shall be granted as soon as possible.

History: En. Sec. 3, Ch. 262, L. 1969.

Title of Act

An act to generally revise the Montana Juvenile Code Title 10, chapter 6 by redefining delinquent child; placing the jurisdiction of persons under eighteen charged with violating any laws of the state or city ordinance with the juvenile court; allowing the county attorney under direction of the juvenile judge to file an information against a child sixteen or over who has committed murder, rape, arson, manslaughter, robbery or burglary; deleting reference to separate facilities used for juveniles confined in the state prison; giving the district court judge discretionary power to appoint committees to assist him in juvenile matters; amending sections 10-602, 10-603, 10-607, 10-610, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630, and 80-2204, R. C. M. 1947; and repealing sections 75-3001, 75-3002, 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, and 10-632, R. C. M. 1947.

10-605. Repealed.

Repeal

Section 10-605 (Sec. 4, Ch. 227, L. 1943) relating to the requirements of a petition, was repealed by Sec. 16, Ch. 262, Laws 1969.

10-605.1. Preliminary inquiry—disposition—petition. (1) Whenever any person informs the court that a child is a delinquent as defined in this act the court shall cause, by citation or otherwise, the child to be brought before the court or the juvenile probation officer for the purpose of making a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken. The matter may be handled by an informal adjustment including the placing of the child on probation, or the court may order the county attorney to file a petition charging the child with being a juvenile delinquent.

(2) If a petition is filed the proceeding shall be entitled, "In the matter of ....., a child under eighteen (18) years of age." Any record made on any juvenile matter shall not be open to public examination without order of the court.

(3) The petition shall be prepared and signed by the county attorney and shall contain a brief recitation of the facts which bring the child within the provisions of this act, and, shall include such information as to parents, residence and other matters as will properly inform the court on the matter.

History: En. Sec. 4, Ch. 262, L. 1969; amd. Sec. 1, Ch. 195, L. 1971.

Amendments

The 1971 amendment inserted "information as to parents" in the latter portion of subsection (3).

10-607. Service of citation. (1) Written petition. Service of citation shall be made personally by the delivery of copies thereof to the person cited; provided that if the judge is satisfied that it is impracticable to serve personally such citation or the notice provided in the preceding section, he may order service by registered mail to their last known ad-

dress, or by the publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if service is effected at least twenty-four hours before the time fixed in the citation for the return thereof.

Service of citation, process or notice required by this act may be made by any suitable person under the direction of the court.

(2) Citation for an informal hearing may order the child brought before the court immediately or at any time set by the court. The citation may command the child be brought before the court immediately in which case it must be directed to a peace officer and must be handled like a warrant of arrest.

History: En. Sec. 6, Ch. 227, L. 1943; amd. Sec. 5, Ch. 262, L. 1969.

Amendments

The 1969 amendment designated the first paragraph as subsection (1) and inserted "Written petition"; deleted a former third paragraph which provided for reimbursement of probation officers; and added subsection (2).

10-608.1. Taking child into custody—release—holding child until hearing—notification of apprehension. (1) Whenever any peace officer believes, on reasonable grounds, that any child is violating any law or ordinance or engaging in other conduct that would be grounds for finding the child a delinquent, or when the surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken, then the peace officer shall take the child into custody in the same manner as for the arrest of an adult.

(2) Whenever the peace officer believes, on reasonable grounds, that the child can be released to a parent, guardian or other person who has had custody of the child, then the peace officer may release the child to that person or persons upon receiving a written promise from him or them to bring the child before the juvenile court or the juvenile probation officer at a time and place specified in the written promise.

(3) Whenever the peace officer believes, on reasonable grounds, that the child must be held in custody until his appearance in juvenile court, then the peace officer must deliver the child to the juvenile court or probation officer without undue delay. If it is necessary to hold the child pending appearance before the juvenile court then the child must be held in some place that has been approved by the juvenile court and completely separated from adult offenders.

(4) Whenever any peace officer has apprehended a child as hereinabove provided, he shall, as soon as practicable, notify the juvenile court or probation officer of such fact with a report of his reasons for the apprehension.

History: En. Sec. 6, Ch. 262, L. 1969.

10-609. Repealed.

Repeal

Section 10-609 (Sec. 8, Ch. 227, L. 1943; Sec. 3, Ch. 276, L. 1947), relating to the release of children taken into custody, was repealed by Sec. 16, Ch. 262, Laws 1969.

10-610. Transfer from other courts. If, during the pendency of a criminal or quasi-criminal proceeding against any person in any other court, it shall be ascertained that said person was at the time of com-

mitting the alleged offense within the definition of "delinquent child" as set out in section 10-602, R. C. M. 1947, it shall be the duty of such court to transfer such case immediately, together with all papers, documents, and testimony connected therewith, to the juvenile court. The court making the transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile court or to that court itself, or release such child in the custody of some suitable person, to appear before the juvenile court at a time designated. The juvenile court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance.

History: En. Sec. 9, Ch. 227, L. 1943; amd. Sec. 4, Ch. 276, L. 1947; amd. Sec. 7, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "proceeding" for "charge"; and substituted reference to section 10-602 generally for reference to subdivision (2) (b) of that section.

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2) (b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) and (2). * * * [Same as parent volume.]

(3) In the case of such child of the age of sixteen (16) years or older who the court feels would be a suitable person for placement at a youth forest camp, the court should notify the director of the department of institutions of such finding and the director of the department of institutions should designate to the court the juvenile facility to which the child should be delivered for evaluation. The court may then commit such child to the department of institutions for not to exceed thirty (30) days for the purpose of evaluation as to such child's suitability for such placement, and order the child delivered for evaluation to the juvenile facility designated by the director. If after such evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at such camp, the court may then commit such child directly to the youth forest camp under the terms and conditions of the commitment provided for in this act. If, however, the department of institutions reports to the court that such child is not suitable for placement in such camp, stating the reasons therefor, he shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting such child to the designated juvenile facility for evaluation and the cost

of returning such child to the court, should that become necessary, shall be borne by the county of such child's residence.

(4) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, have sleeping quarters separate and apart from inmates who are over the age of twenty-one (21) years, and additionally shall be kept separate and apart at other times in those areas where staff and facilities will permit.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1961; amd. Sec. 2, Ch. 134, L. 1967; amd. Sec. 1, Ch. 227, L. 1969; amd. Sec. 1, Ch. 368, L. 1971.

Compiler's Notes

Subdivision (2) (b) of section 10-602, referred to in the first paragraph, has been amended, deleting the provision concerning attempts or completion of enumerated felonies. For new law, see sec. 10-603.

Amendments

The 1969 amendment deleted the remate under twenty-one be separated at all times from those over twenty-one and substituted the present provision for separate sleeping quarters and separation at other times where staff and facilities permit.

The 1971 amendment inserted subdivision (3) and redesignated former subdivision (3) as subdivision (4).

Effective Dates

Section 2 of Ch. 227, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 5, 1969.

Section 2 of Ch. 368, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Cross-References

Commitment of child to reception and evaluation center, sec. 80-1704.

10-613. Modification of judgment. Any order of the court may be modified at any time, except an order committing a child to the custody of a state custodial or correctional institution, or to the department of institutions.

History: En. Sec. 12, Ch. 227, L. 1943; amd. Sec. 2, Ch. 123, L. 1945; amd. Sec. 8, Ch. 262, L. 1969.

Compiler's Notes

The amendment of this section was not mentioned in the Title of Ch. 262, Laws 1969.

Amendments

The 1969 amendment added "or to the department of institutions."

10-618 to 10-620. Repealed.

Repeal

Sections 10-618 to 10-620 (Secs. 17 to 19, Ch. 227, L. 1943; Sec. 8, Ch. 276, L. 1947), relating to the suspension of sentence and posting of bond or undertaking in juvenile cases, were repealed by Sec. 16, Ch. 262, Laws 1969.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Preference in appointment shall be given to any person who possesses the following qualifications:

(1) a bachelor's degree from an accredited college or university in the behavioral sciences, or

(2) a bachelor's degree from an accredited college or university in some subject other than the behavioral sciences, and three (3) years of experience in work of a nature related to the duties of the probation department as set forth in section 10-623.

Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed eleven thousand dollars ($11,000), or on a per diem basis at the rate of forty dollars ($40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one (1) county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963; amd. Sec. 1, Ch. 94, L. 1965; amd. Sec. 1, Ch. 7, L. 1967; amd. Sec. 9, Ch. 262, L. 1969; amd. Sec. 1, Ch. 318, L. 1971; amd. Sec. 1, Ch. 428, L. 1971; amd. Sec. 1, Ch. 505, L. 1973.

Amendments

The 1969 amendment added the final paragraph.

Chapter 318, Laws of 1971, increased the yearly salary from $9,000 to $10,200; fixed the per diem rate at $40 per day; and made minor changes in style.

Chapter 428, Laws of 1971, included the changes made by Ch. 318; added the second sentence, including the numbered subdivisions, to the end of the present first paragraph; inserted "giving preference to persons having the qualifications

suggested for appointment as the chief probation officer" in the third paragraph; and made a minor change in phraseology.

The 1973 amendment increased the maximum salary from $10,200 to $11,000.

Repealing Clause

Section 2 of Ch. 318, Laws 1971 repealed all acts and parts of acts in conflict therewith.

10-623. Duties and powers of the probation department. The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations and submit the same to the judge, or deal with the same as the judge may direct. The department shall furnish to any delinquent child placed on probation or to any parent or guardian of such child a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts therefor and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless and until otherwise ordered by the judge.

History: En. Sec. 22, Ch. 227, L. 1943; amd. Sec. 9, Ch. 276, L. 1947; amd. Sec. 10, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in the third sentence, deleted "or to any person within the purview of sections 10-617 and 10-618" before "placed on probation"; and inserted, after that phrase, "or to any parent or guardian of such child."

10-625. Physical and mental examinations and treatment. The court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist, [or] psychologist, appointed by the court.

Whenever a child, concerning whom a petition has been filed, appears to be in need of medical or surgical care, the court may order the parent, guardian or custodian to provide treatment for such child in a hospital or otherwise. If such parent, guardian, or custodian fails to provide such treatment, the court may, after due notice, enter an order therefor, and expense thereof, when approved by the court, shall be a charge upon the county; but the court may adjudge that the person or persons having the duty under the law to support such child pay part or all of the expenses of such treatment.

History: En. Sec. 24, Ch. 227, L. 1943; amd. Sec. 11, Ch. 262, L. 1969.

Compiler's Notes

The bracketed word "or" in the first paragraph was inserted by the compiler.

Amendments

The 1969 amendment deleted "in the manner provided in a preceding section of this act" from the end of the section.

10-626. Place of detention. Whenever it is necessary for any peace officer to detain any child under eighteen (18) years of age, or, whenever by order of the court or the chief probation officer it is necessary to detain any such child, then such child shall be detained in a room or ward which has been approved by the juvenile court judge. Such room or ward must assure that children are kept separated by sex and that they are not permitted to associate in any way with adults who are also being confined in the same building or area.

History: En. Sec. 25, Ch. 227, L. 1943; amd. Sec. 10, Ch. 276, L. 1947; amd. Sec. 12, Ch. 262, L. 1969.

Amendments

The 1969 amendment rewrote this section which formerly prohibited placing children under 18 in any prison, jail or lockup unless the child was a menace to other persons, provided that a child over 16 charged with commission or attempt of felony formerly enumerated in section 10-602 or an adult under 21 charged with felony could be placed in jail in a room or ward separate from adults and stated that provision should be made temporary detention, boarding or care of children not charged with enumerated felony.

10-628. Juvenile court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, which committee shall be designated as a juvenile court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969.

Amendments

The 1969 amendment substituted "may" for "must" before "appoint a committee."

10-630. Appeals. In the case of a delinquent child an appeal to the supreme court may be taken by the child or an aggrieved party in the manner provided by law or by rule of court for appeal in civil cases. In any case charging an adult with contributing to the delinquency of a child, an appeal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in criminal cases. In any other case against an adult coming under this act an appeal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in civil cases. An appeal, in the case of a delinquent child, shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution or agency to whose care such delinquent child shall have been committed unless that court shall so order.

On appeal the supreme court shall review the matter and may make such order as appears proper, including any necessary modification of the district court order.

History: En. Sec. 29, Ch. 227, L. 1943; amd. Sec. 11, Ch. 276, L. 1947; amd. Sec. 14, Ch. 262, L. 1969.

Amendments

The 1969 amendment substituted "child or an aggrieved party" for "party aggrieved" in the first sentence; and substituted the second paragraph for former fifth sentence which provided that court, if it did not dismiss proceeding, should affirm or modify the order and remand child to jurisdiction of the district court which should retain jurisdiction just as if no appeal had been taken.

10-632. Repealed.

Repeal

Section 10-632 (Sec. 33, Ch. 227, L. 1943; Sec. 84, Ch. 199, L. 1965), relating to the effect of the juvenile court law on the institutional and welfare laws, was repealed by Sec. 16, Ch. 262, Laws 1969.

CHAPTER 7—CHILD ADOPTION AGENCIES

10-703. Licenses issued by department of public welfare, etc.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

Payment to Private Institutions

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies is not unconstitutional. Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M. 381, 480 P 2d 181.

Department is not empowered under this section to deprive indigent expectant mothers of public assistance for medical, hospital, and foster home expenses merely because they apply to private rather than public adoption agencies for counseling and adoptive services. Montana State Welfare Board v. Lutheran Social Services of Montana, 156 M 381, 480 P 2d 181.

CHAPTER 8—DAY CARE FACILITIES FOR CHILDREN

Section
10-802.1. Municipal day care facilities authorized—tax levy.

10-802.1. Municipal day care facilities authorized—tax levy. The governing body of a city, town or municipality may in its discretion establish a fund to establish, and maintain licensed day care centers and homes within the geographic boundaries of the governing body by a levy of up to one (1) mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies. The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance and development of day care centers and homes.

History: En. 10-802.1 by Sec. 1, Ch. 392, L. 1973.

Title of Act

An act to authorize the creation of funds to establish and maintain licensed day care centers and homes, and providing for a special levy.

10-803. Standards for child care.

Cross-References

Advisory council abolished, sec. 82A-1908(1).

State board of public welfare abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 9—REPORTS OF CHILD NEGLECT OR ABUSE

Section
10-901. Declaration of policy.
10-902. Reports.
10-903. Action on reporting.

10-901. Declaration of policy. It is the policy of this state to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever possible.

History: En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973.

Amendments

The 1973 amendment completely rewrote this section and added the second sentence. For prior law, see parent volume.

10-902. Reports. Any physician who examines, attends or treats a person under the age of majority, or any nurse, teacher, social worker, attorney or law enforcement officer or any other person who has reason to believe that a child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county where the child resides. This report shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and the facts which led the person reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973.

Amendments

The 1973 amendment substituted "physician" at the beginning of the section for "licensed physician and surgeon, resident or intern"; substituted "any nurse, teacher, social worker, attorney or law enforcement officer or any other person" in the first sentence for "any registered nurse, practical nurse, any visiting nurse, any schoolteacher, or any social worker acting in his or her official capacity"; inserted "the department of social and rehabilitation services, its local affiliate, and" before "the county attorney" near the end of the first sentence; substituted "where the child resides" at the end of the first sentence for "where such examination is made or such child is located"; deleted from the end of the first sentence a proviso relating to reports through the head of an institution; deleted from the beginning of the second sentence a clause requiring reduction to writing of reports initially made verbally; and made minor changes in phraseology.

10-903. Action on reporting. If from said report it shall appear that the child suffered such injury or injuries or willful neglect, the social worker shall conduct a thorough investigation into the home of the child involved and into the circumstances surrounding the injury of the child and into all other matters which, in the discretion of the social worker, shall be

relevant and material to the investigation. If from the investigation it shall appear that the child suffered such injury or injuries or willful neglect, the department shall provide protective services to protect the child and preserve the family. The department will advise the county attorney of its investigation.

The investigating social worker shall also furnish a written report to the department of social and rehabilitation services who shall have the responsibility of maintaining a central registry on child abuse or willful neglect cases.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973.

Amendments

The 1973 amendment completely rewrote this section to provide for investigation by the social worker and protective services by the department rather than investigation by the county attorney. For prior law, see parent volume.

CHAPTER 11—DISTRICT YOUTH GUIDANCE HOMES

Section
10-1101. Establishment of district youth guidance home program.
10-1102. Definitions.
10-1103. Nonprofit corporations to establish homes authorized—power to receive facilities and funds.
10-1104. Governmental aid to nonprofit organizations.
10-1105. Authority of district judge to commit juvenile delinquents.
10-1106. Petition by person under 21 to be placed in district youth guidance home.
10-1107. Continuing jurisdiction of district court over juvenile.
10-1108. Per diem charge to financially able parents.
10-1109. Placement of juveniles by department of institutions.
10-1110. Rules and regulations.
10-1111. Federal assistance.

10-1101. Establishment of district youth guidance home program. The legislative assembly, in recognition of the wide and varied needs of juvenile delinquents and juveniles tending toward delinquency of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by this act a district youth guidance home program to provide facilities and services for the rehabilitation of juvenile delinquents and juveniles tending toward delinquency and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions.

History: En. Sec. 1, Ch. 427, L. 1971.

Title of Act

An act providing for nonprofit organizations to establish district youth guidance homes for delinquent and other children; providing for committal of juvenile delinquents and other juveniles to district youth guidance homes; providing authority to department of institutions to make rules and regulations for the operation of such homes.

10-1102. Definitions. Definitions:

(a) Juvenile delinquent. A delinquent child is defined in section 10-602, R.C.M. 1947.

(b) A juvenile tending toward delinquency. Any person under the age of twenty-one (21) years over whom the juvenile court may have jurisdiction under section 10-603, R.C.M. 1947, and who a district court judge may find to have committed any of the acts of a delinquent child

as defined by section 10-602, R.C.M. 1947, but whom in the court's discretion has not yet become a delinquent child as therein defined.

(c) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state institutions, the function of which is to provide a home and guidance through adult supervision for juvenile delinquents and juveniles tending toward delinquency.

History: En. Sec. 2, Ch. 427, L. 1971.

10-1103. Nonprofit corporations to establish homes authorized—power to receive facilities and funds. Nonprofit corporations or associations in any judicial district may be formed or organized for the purpose of establishing under this act district youth guidance homes and to receive from the department of institutions and other governmental units such services, facilities and funds as the department or other governmental units may be authorized to provide by law.

History: En. Sec. 3, Ch. 427, L. 1971.

10-1104. Governmental aid to nonprofit organizations. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for juvenile delinquents and juveniles tending toward delinquency in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes.

History: En. Sec. 4, Ch. 427, L. 1971.

10-1105. Authority of district judge to commit juvenile delinquents. A district judge is hereby authorized in his discretion to place a juvenile delinquent or juvenile tending toward delinquency to said district youth guidance home for any period of time up to the child's twenty-first birthday subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 5, Ch. 427, L. 1971.

10-1106. Petition by person under 21 to be placed in district youth guidance home. Any person under the age of twenty-one (21) years may petition the district court of a district in which a district youth guidance home has been established to be placed to a district youth guidance home for any period of time up to said person's twenty-first birthday.

History: En. Sec. 6, Ch. 427, L. 1971.

10-1107. Continuing jurisdiction of district court over juvenile. The district court placing a juvenile or juvenile tending toward delinquency to a district youth guidance home shall retain continuing jurisdiction over said juvenile until said juvenile becomes twenty-one (21) years of age or is otherwise discharged by order of the court.

History: En. Sec. 7, Ch. 427, L. 1971.

10-1108. Per diem charge to financially able parents. A district judge placing a juvenile delinquent or a juvenile tending toward delinquency to a district youth guidance home may, if the parent or parents of the juvenile are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a per diem charge not to exceed the per diem charge established by the department of institutions for each child placed to the Montana children's center.

History: En. Sec. 8, Ch. 427, L. 1971.

10-1109. Placement of juveniles by department of institutions. The department of institutions is hereby authorized as part of its aftercare program to place a juvenile delinquent in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 9, Ch. 427, L. 1971.

10-1110. Rules and regulations. The director of the department of institutions shall have power to adopt reasonable rules, regulations and standards to carry out the administration and purposes of this act.

History: En. Sec. 10, Ch. 427, L. 1971.

10-1111. Federal assistance. The department of institutions is hereby authorized to make application for and to receive federal-aid money or other assistance which might now or hereafter become available for programs in the nature of the one created by this act.

History: En. Sec. 11, Ch. 427, L. 1971.

Separability Clause

Section 12 of Ch. 427, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 11—CITIES AND TOWNS

Chapter
2. Classification and organization of cities and towns, 11-201, 11-203.
3. Changes in classification of cities and towns, 11-308 to 11-321.
6. Plats of cities and towns and additions thereto, Repealed—Section 20, Chapter 500, Laws of 1973.
7. Officers and elections, 11-709, 11-719, 11-721.1, 11-725, 11-727.
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CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

Section
11-201. Cities and towns classified.
11-203. Organization of cities and towns—petition and census.

11-201. (4959) **Cities and towns classified.** Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten thousand and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town; provided, that every municipal corporation having a population of more than five thousand and less than seven thousand five hundred may by resolution adopted by the city council

pursuant to sections 11-301 to 11-305 be either a second class city or a third class city; and provided, that every municipal corporation having a population of more than one thousand and less than twenty-five hundred, may by resolution adopted by the city or town council, as the case may be, pursuant to sections 11-301 to 11-305, be either a city or town. Nothing in this act shall be construed as affecting the status or classification of any existing city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969.

Amendments

The 1969 amendment inserted the proviso permitting municipal corporations of more than 5,000 and less than 7,500 population to be either a second or third class city.

11-203. (4961) **Organization of cities and towns—petition and census.** Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two thirds (2/3) of the qualified electors, but not more than three hundred (300) such electors who are residents of the state, and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof each of which shall contain one hundred fifty (150) qualified electors or more and, which must not exceed one square mile for each five hundred inhabitants resident therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board of county commissioners, and the same must be filed by it in the county clerk's office. No municipal corporation may be formed unless the number of inhabitants is three hundred or upwards; and unless the boundary of the proposed territory to be incorporated is more than three (3) miles from the boundary, measured from the nearest point between the two (2), of any presently incorporated city or town or there is presented to the board, appropriate evidence that any presently incorporated city or town within three (3) miles which legally could annex, but has refused to annex the proposed territory.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 86 and once by Ch. 515. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 86, Laws of 1973, added the clause following the semicolon in the last sentence of this section.

Chapter 515, Laws of 1973, substituted "two-thirds (⅔) of the qualified electors, but not more than three hundred (300) such electors who are" for "fifty qualified electors" in the first sentence; inserted "each of which shall contain one hundred fifty (150) qualified electors or more and"

near the end of the first sentence; inserted "house-to-house" in the fourth sentence; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 515, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 4, 1973.

CHAPTER 3—CHANGES IN CLASSIFICATION OF CITIES AND TOWNS

Section
11-308. Automatic disincorporation.
11-309. Disincorporation by election—notice.
11-310. Form of ballot.
11-311. Conduct of election.
11-312. Insufficient vote to disincorporate—waiting period for new election.
11-313. Order of disincorporation on vote by electors.
11-314. Order for automatic disincorporation.
11-315. Certification of financial condition.
11-316. Release of public property to county commissioners—police court records.
11-317. Payment of debts and collection of receivables of city or town.
11-318. Tax levy in the event of insolvency.
11-319. Surplus assets deposited to special fund.
11-320. Collection of amounts due to corporation.
11-321. Payment of costs and expenses from special county fund.

11-306, 11-307. (4974, 4975) Repealed.

Repeal

Sections 11-306, 11-307 (Secs. 4955, 4956, Pol. C. 1895; Sec. 1, Ch. 3, L. 1931), relating to the disincorporation of cities or towns, were repealed by Sec. 16, Ch. 99, Laws 1973. For new law see secs. 11-308 to 11-321.

11-308. Automatic disincorporation. If the governing body of any city or town incorporated under the laws of the state of Montana ceases to exist or fails to function for a period of two (2) years, the city or town shall be disincorporated in the manner set forth in this act.

History: En. Sec. 1, Ch. 99, L. 1973.

Title of Act

An act providing for the automatic disincorporation of Montana cities or towns and procedures for disincorporation by petition in cities or towns; providing for elections to determine the question; establishing procedures for managing existing debt; defining the effect of disincorporation; and repealing sections 11-306 and 11-307, R. C. M. 1947.

11-309. Disincorporation by election—notice. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the qualified electors of a city or town equal in number to twenty per cent (20%) of the number of voters voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, the board of county commissioners shall order within sixty (60) days that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall not be less than thirty (30) days nor more than sixty (60) days after the board of county commissioners orders the election.

(3) Notice of the election shall be published once each week for four (4) consecutive weeks and shall state that the question of disincorporation of the city or town will be submitted to the qualified electors of the city or town on the designated day.

History: En. Sec. 2, Ch. 99, L. 1973.

11-310. Form of ballot. The form of the ballot is:

☐ "For the disincorporation of ———————— (insert name of city or town)

☐ "Against the disincorporation of ———————— (insert name of city or town)."

History: En. Sec. 3, Ch. 99, L. 1973.

11-311. Conduct of election. The election is conducted in the same manner as a regular city or town election except that the election officials are appointed by the board of county commissioners. The election returns are made to the board of county commissioners and canvassed in the same manner as are general election returns.

History: En. Sec. 4, Ch. 99, L. 1973.

11-312. Insufficient vote to disincorporate—waiting period for new election. If it is found by the canvass of the votes that less than sixty per cent (60%) of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of two (2) years from the date of the election.

History: En. Sec. 5, Ch. 99, L. 1973.

11-313. Order of disincorporation on vote by electors. In case the canvass reveals that sixty per cent (60%) or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands make and file in their office, and cause to be entered upon their proceedings, an order that the petition for disincorporation be granted, and declaring that the city or town is disincorporated. The order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the Montana secretary of state and the head of the state department of intergovernmental relations.

History: En. Sec. 6, Ch. 99, L. 1973.

11-314. Order for automatic disincorporation. In cases where a city or town has been disincorporated by virtue of the provisions of section 1 [11-308] of this act, the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the state officials named in section 6 [11-313] above.

History: En. Sec. 7, Ch. 99, L. 1973.

11-315. Certification of financial condition. Upon receiving a certified copy of the order of disincorporation, the director of the department of intergovernmental relations shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners. The statement shall include, but not be limited to, a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable and a statement of all city

or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness. Under the supervision of the director of the department of intergovernmental relations or his agent, the city or town treasurer shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury, the check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated. The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this act.

History: En. Sec. 8, Ch. 99, L. 1973.

11-316. Release of public property to county commissioners—police court records. Upon the disincorporation of a city or town, every public officer of the city shall immediately turn over, to the board of county commissioners of the county in which the city or town is situated, all public property of every nature and description in their possession. Provided, however, that all court records of the police court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

History: En. Sec. 9, Ch. 99, L. 1973.

11-317. Payment of debts and collection of receivables of city or town. The disincorporation of a city or town does not invalidate or affect any right, penalty or forfeiture accruing to the city or town, nor invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town. The board of county commissioners of the county succeeding the disincorporated city or town shall provide for the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred, and for the collection of any indebtedness due the city or town. All instruments for the repayment of indebtedness are drawn, by order of the board of county commissioners, on the fund provided in section 8 [11-315] of this act.

History: En. Sec. 10, Ch. 99, L. 1973.

11-318. Tax levy in the event of insolvency. If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of section 8 [11-315] with which to pay any indebtedness of the corporation, the board of county commissioners has the power, and it is its duty to levy and collect from the territory formerly included within the city or town, a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due. The tax or taxes, assessments and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within said territory, or portions thereof, for the payment of

said debts. All moneys paid into the county treasury under the provisions of this act shall be placed to the credit of the special fund.

History: En. Sec. 11, Ch. 99, L. 1973.

11-319. Surplus assets deposited to special fund. If, after payment of the debts of the corporation, and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund. Money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of section 10 [11-317].

History: En. Sec. 12, Ch. 99, L. 1973.

11-320. Collection of amounts due to corporation. The board of county commissioners shall make provisions for the collection of the amounts due to a corporation and for the closing up of its affairs, and any act or acts, necessary for that purpose and not otherwise provided shall, upon order of the board of county commissioners, be performed by the officer or officers performing similar duties for the county, as if it had been performed by the proper officer of the city or town, before disincorporation. The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: En. Sec. 13, Ch. 99, L. 1973.

11-321. Payment of costs and expenses from special county fund. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town, provided for in sections 1 through 13 [11-308 through 11-320], shall be paid out of the special fund in the county treasury.

History: En. Sec. 14, Ch. 99, L. 1973.

Separability Clause

Section 15 of Ch. 99, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 99, Laws 1973 read "Sections 11-306 and 11-307, R. C. M. 1947, are repealed."

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

11-403. (4978) **Extension of boundaries to include contiguous, etc.**

Constitutionality

This section does not violate article III, section 14 of state constitution nor Amendment 5 of United States constitution which provides that private property may not be taken for public use without payment of just compensation, and does not violate article III, section 27 of state constitution or Amendments 5 and 14 of United States constitution which provide that private property cannot be taken without due process of law. Brodie v. City of Missoula, 155 M 185, 468 P 2d 778.

Certificate of Survey

Contention that 30-acre tract was improperly annexed to city due to failure of city council to survey unplatted land and file certificate of survey prior to annexation was without merit since entire

tract was surrounded by city and therefore, under this section, no certificate of survey was necessary. Brodie v. City of Missoula, 155 M 185, 468 P 2d 778.

Discretion of City Council

Determination of question of whether annexation of tract of realty into city is in best interest of city and inhabitants of such area to be annexed is expressly granted to city council by this section, and exercise of such discretion is subject to judicial review only where council has proceeded contrary to statute or where they have acted so arbitrarily or capriciously that it may be said they exercised no discretion at all. Brodie v. City of Missoula, 155 M 185, 468 P 2d 778.

"Freeholder" Defined

The term "freeholder" as used in subsection (2) means the purchaser and not the seller under a contract for deed. State ex rel. Stephens v. City of Hamilton, — M —, 504 P 2d 283.

Incidental Agricultural Use of Land Annexed

Contention that 30-acre tract of land was improperly annexed to city since such land was being used for agricultural purposes and therefore exempt from annexation under this section was without merit since evidence indicated that land was primarily held as developmental parcel for housing development and agricultural use was only incidental thereto. Brodie v. City of Missoula, 155 M 185, 468 P 2d 778.

Wholly Surrounded Property

Contention on appeal that city had improperly annexed certain platted lots due to fact that one side of lots was contiguous with outdoor theater and thus such lots were not "wholly surrounded" by city, as required by this section, was without merit since "wholly surrounded," as used in this section, does not mean city property must also be wholly contiguous to such property, rather it means that tract is so located that it is impossible to reach it without crossing city property. Calvert v. City of Great Falls, 154 M 213, 462 P 2d 182.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

(Repealed—Section 20, Chapter 500, Laws of 1973)

11-601 to 11-614.2, 11-615, 11-616. (4980 to 4994) **Repealed.**

Repeal

Sections 11-601 to 11-614.2, 11-615, 11-616 (Sec. 1, p. 39, L. 1883; Sec. 1, p. 226, L. 1889; Secs. 5000 to 5013, Pol. C. 1895; Secs. 1 to 6, Ch. 119, L. 1917; Sec. 1, Ch. 48, L. 1921; Sec. 1, Ch. 64, L. 1933; Sec. 1, Ch. 5, L. 1939; Sec. 1, Ch. 20, L. 1943; Sec. 1, Ch. 180, L. 1945; Sec. 1, Ch. 200, L. 1947; Sec. 1, Ch. 227, L. 1947; Sec. 1, Ch. 82, L. 1953; Sec. 1, Ch. 152, L. 1961; Secs. 1, 2, Ch. 295, L. 1969; Sec. 1, Ch. 19, L. 1971), relating to plats of cities and towns and additions thereto, were repealed by Sec. 20, Ch. 500, Laws 1973.

CHAPTER 7—OFFICERS AND ELECTIONS

Section
11-709. Biennial elections in cities and towns—terms of office.
11-719. Oath and bonds—vacancy.
11-721.1. Recall of elective officers.
11-725. Salaries and qualifications of mayor and alderman.
11-727. Compensation of justices of the peace acting as police judge.

11-709. (5003) **Biennial elections in cities and towns—terms of office.** On the first Tuesday of April of every second year a municipal election must be held, at which the qualified electors of each town or city must elect the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen to be voted for by the wards they respectively represent; the mayor to hold office for a term of four (4) years, and until the qualification of his successor; and each alderman so elected to hold office for a term of four (4) years, and until the qualification of his successor; and also in cities of the first, second and third class, a police judge and a city treasurer, who shall hold office for a term of four

(4) years, and until the qualification of their successors; provided, however, that in the election to be held the first Tuesday of April, 1973, one alderman from each ward will be elected for a term of two (2) years and one alderman from each ward will be elected for a term of four (4) years, and in the next succeeding election and thereafter, one alderman from each ward will be elected for a four (4) year term. The city council shall by resolution determine which office of alderman in each ward shall be for a term of two (2) years and which for four (4) years at the election to be held on the first Tuesday of April, 1973.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R. C. M. 1921; amd. Sec. 1, Ch. 60, L. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 193 and once by Ch. 343. Neither amendatory act referred to or incorporated the changes made by the other. Chapter 193 was approved on March 3, 1971, and Ch. 343 on March 15, 1971, so that Ch. 343 governs to the extent that they conflict. The only conflict appears to be in the language added by Ch. 193, which referred in two places to the election "to be held on the first Monday of April, 1973." The compiler has therefore made a composite section embodying the changes made by both amendatory acts but substituting "Tuesday" for "Monday" in the language added by Ch. 193.

Amendments

Chapter 193, Laws of 1971, substituted "the officers of the city as defined in section 11-701 whose terms of office will expire, with aldermen" after "must elect" for "a mayor and two aldermen from each ward"; increased all terms of office from two years to four years; substituted the proviso at the end of the first sentence for a proviso relating to 1936 elections; and added the second sentence.

Chapter 343, Laws of 1971, substituted "Tuesday" for "Monday" in the beginning of the first sentence; deleted the proviso relating to 1936 elections at the end of the first sentence; and made a minor change in style.

Effective Date

Section 2 of Ch. 193, Laws 1971 read "This act is effective on December 31, 1972."

11-716. (5010) **Repealed.**

Repeal

Section 11-716 (Sec. 4755, Pol. C. 1895; Sec. 5, Ch. 76, L. 1961), relating to residency requirements for electors, was repealed by Sec. 2, Ch. 40, Laws 1973.

11-717. (5011) **Election judges and clerks—voting places.**

Compiler's Notes

Section 23-601, referred to in this section, was repealed by Sec. 248, Ch. 368, Laws 1969.

11-719. (5013) **Oath and bonds—vacancy.** Each officer of a city or town must take the constitutional oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed, but if anyone, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

History: En. Sec. 4758, Pol. C. 1895; re-en Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1973.

Amendments

The 1973 amendment inserted "constitutional" before "oath of office" near the beginning of the section.

11-721. (5015) **Vacancies—how filled—removal of officer.**

Cross-References

Filling vacancies in municipal offices after enemy attack, secs. 82-3804, 82-3805.

11-721.1. Recall of elective officers. (1) The holder of any elective office under a mayor-council form of municipal government may be removed at any time by the electors qualified to vote. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five per cent (25%) of all qualified electors registered for the last preceding general municipal election, demanding an election for recall of the person sought to be recalled, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer competent to administer oaths that the statements therein are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

(2) Within ten (10) days from the date of filing such petition the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate. The clerk shall, within ten (10) days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than seventy (70) days nor more than eighty (80) days from the date of the clerk's certificate to the council that a sufficient petition is filed.

(3) The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other elections.

(4) Any vacancy created as a result of such recall election shall be filled as prescribed in section 11-721, R.C.M. 1947.

History: En. Sec. 1, Ch. 329, L. 1971.

Title of Act

An act to provide for removal of elective officers of cities and towns under a mayor-council form of government.

11-725. (5019) **Salaries and qualifications of mayor and alderman.** The maximum annual salary of a mayor must be fixed by ordinance in all classes of cities. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969.

Amendments

The 1969 amendment inserted "maximum" before "annual salary" and "in all classes of cities" after "ordinance" in the first sentence; deleted specific maximum salaries for mayors of first, second and third class cities; in the former second paragraph, deleted requirement that salaries of aldermen be fixed by ordinance and specific maximum salaries for alderman of first, second and third class cities, making the last sentence of the former second paragraph the present last sentence.

11-727. (5021) **Compensation of justices of the peace acting as police judge.** In towns, the council may designate a justice of the peace of the county in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party.

History: En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R. C. M. 1921; amd. Sec. 5, Ch. 491, L. 1973.

Amendments

The 1973 amendment substituted "county" for "township."

CHAPTER 8—EXECUTIVE POWERS—MAYOR—CLERK—TREASURER—CHIEF OF POLICE AND ATTORNEY

Section
11-802.1. Strong mayor form of government authorized.

11-802.1. Strong mayor form of govenrment authorized. (1) The qualified electors of any city or town in this state may, in the manner provided in Title 11, chapter 11, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(a) To appoint and remove, without consent of the council, all nonelective officers of the city or town.

(b) To exercise absolute control over all departments and divisions of the city or town created in this title, or that may be created by the council.

(c) To appoint one (1) or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies. The administrative assistants shall be answerable solely to the mayor.

(d) To be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in chapter 14 of this title.

(e) To appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor. The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

(2) If any ordinance duly adopted in accordance with this section is in conflict with sections 11-801 or 11-802 above, the provisions of this section shall prevail.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973.

Title of Act

An act to allow the qualified electors of any city or town in the state to adopt a strong mayor form of municipal government; creating a new section to be numbered 11-802.1; and partially implementing article XI, section 3 of the Montana constitution of 1972.

11-806. (5033.1) **Financial statement of city or town—contents, etc.**

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(e).

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section
11-951. Poll tax—limitation on amount—work for failure to pay.
11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.
11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.
11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.
11-982. Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.

11-905. (5039.4) **Building or hiring and lighting, etc.**

Installment Contracts

City can finance construction of municipal buildings by installment contract under section 11-1202 as well as by bond issue or borrowing under section 11-966. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

11-932. (5039.29) **Regulation of explosives and inflammable material.**

Gasoline Within Three-Mile Limit

Ordinance regulating installation and use of coin-operated gasoline dispensing devices located outside, but within three miles of city limits was proper exercise of city's authority under statute. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

11-935. (5039.32) **Abatement of and regulation concerning nuisances.**

Provision of Specific Penalty

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under section 11-950, since this section provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, 155 M 27, 465 P 2d 838.

11-950. (5039.47) **Penalties for violations of ordinances—limitations.**

Imposition of Jail Sentence

Defendant, who was convicted for maintaining public nuisance, was improperly sentenced to jail under this section since section 11-935 provides specific penalty for nuisance which does not include imprisonment. City of Billings v. Trenka, 155 M 27, 465 P 2d 838.

11-951. (5039.48) **Poll tax—limitation on amount—work for failure to pay.** The city or town council has power: To levy and collect annually from each able-bodied resident of the city or town, between the ages of eighteen (18) and forty-five (45) years, a poll tax not exceeding three

dollars ($3) per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

History: En. Subd. 49, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 9, Ch. 240, L. 1971; amd. Sec. 10, Ch. 94, L. 1973. See also history of section 11-901.

Amendments

The 1971 amendment deleted the word "male" after "able-bodied" near the beginning of the section; reduced the minimum age from 21 to 19 years; and made minor changes in style.

The 1973 amendment reduced the minimum age from nineteen to eighteen years.

11-958. (5039.55) **Repealed.**

Repeal

Section 11-958 (Subd. 56, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927), relating to the power of city and town councils to establish standard weights and measures was repealed by Sec. 43, Ch. 99, Laws 1969.

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent. A city or town upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, to any county or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of councils or commissions involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 301, L. 1969.

Title of Act

An act to permit cities or towns power to sell or trade property to any county or political subdivision; and to provide for the purchase thereof, by a city or town without appraisal.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary. A city or town shall have power to trade with, or purchase from, any county or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 301, L. 1969.

Cross-References

Counties authorized to sell, trade or purchase property, secs. 16-1007.1 and 16-1009.1.

11-966. (5039.63) **Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.** The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks,

wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to a vote and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) The additional indebtedness authorized, including all indebtedness theretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, shall not exceed in the aggregate ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided further, that the above limit of five per centum (5%) shall not be extended, unless the question shall have been submitted to a vote and carried in the affirmative by a vote of the majority of the electors who vote upon such question.

(3) and (4). * * * [Same as parent volume.]

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973. See also history of section 11-901.

Amendments

The 1973 amendment deleted from the first proviso to subdivision (1) a clause defining "value of the taxable property" in the same sense as in section 6 of article XIII of the 1889 constitution; deleted "of the taxpayers affected thereby" following "vote" in the second proviso to subdivision (1) and again in the proviso to subdivision (2); and made minor changes in phraseology.

Installment Contracts

City can finance construction of municipal buildings by installment contract under section 11-1202 as well as by bond issue or borrowing under this section and has implied power to allocate proportionate share of cost of construction among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

11-980. (5039.77) Printing contract.

Cross-References

Printing defined, sec. 19-103.1.

11-982. (5039.79) **Creation of special improvement districts—assessments—expenses payable in warrants—interest on warrants.** The city or town council has power: To create special improvements districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding twenty (20) years; to make such assessments payable in installments, and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

History: En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 11, Ch. 234, L. 1971. See also history of section 11-901.

Amendments

The 1971 amendment deleted from the end of the section "which warrants shall bear interest at a rate not to exceed six per centum per annum"; and made a minor change in style.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section
11-1001. Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.
11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

11-1001. (5040.1) **Authorization of cities and towns to furnish water and sewage service to industries and to persons without city limits—rates—penalty for violations.** (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system and/or a municipal sewage system, to furnish water and/or sewage services to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system, to any person, factory or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water and delivery of sewage services by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line or sewer line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commis-

sion and such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

(3) Any person, firm or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility, who shall willfully turn on the water or sewer line after the same shall have been shut off by or under the direction of the said city for nonpayment of water charges or sewer charges, or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

(4) Any person, firm or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town as a condition to initiate such service to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately and not potentially being serviced by the said water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971.

Amendments

The 1971 amendment inserted references to sewage systems, sewage services and sewer lines throughout the section; inserted "when otherwise required by statute" in the latter part of subsection (2); added subsection (4); and made minor changes in punctuation.

Duty of City

City which undertook pursuant to this section to furnish water to individuals and businesses outside city limits could not refuse service request of business within its service area. City of Polson v. Public Service Commission, 155 M 464, 473 P 2d 508.

11-1020. Operation subject to Motor Carrier Act—exception.

Compiler's Notes

Section 8-128, contained in the reference to sections 8-101 to 8-129 in this section, was repealed by Sec. 6, Ch. 6, Ex. Laws 1969.

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions. All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (⅔) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies pay as part of the officers and employees salary ten dollars ($10) per month for each officer and employee, and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars ($120) per year.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971.

Amendments

The 1968 amendment made the group insurance program mandatory, deleted provision for payment of one-half of total premium not to exceed $7.50 per month and made payment of that amount mandatory; and deleted a proviso dealing with budget aspects of premiums.

The 1971 amendment inserted "including long-term disability" after "health"; increased the employer contribution from $7.50 to $10 per employee per month; added the proviso; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 220, Laws 1969 read "Section 2 of chapter 200, Laws of Montana, 1967, is repealed."

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

Section
11-1102. Ordinances—how prepared.

11-1102. (5056) **Ordinances—how prepared.** (1). * * * [Same as parent volume.]

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969.

Amendments

The 1969 amendment inserted "fire," before "and plumbing codes" in subsection (2).

CHAPTER 12—CONTRACTS AND FRANCHISES

Section
11-1202. Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.
11-1202.1. Division of contracts to circumvent bidding procedures prohibited.

11-1202. (5070) **Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.** All contracts for the purchase of any automobile, truck, or other vehicle or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, or for construction for which must be paid a sum exceeding four thousand dollars ($4,000), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of five (5) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the

most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths (¾) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed four thousand dollars ($4,000) the council may provide for the payment of such an amount in installments extending over a period of not more than five (5) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third (⅓) thereof shall be paid each year, and if such amount is extended over a term of four (4) years, at least one-fourth (¼) is to be paid each year, and if such amount is extended over a term of five (5) years, at least one-fifth (1/5) is to be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd.

Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971.

Amendments

The 1969 amendment, in the first paragraph, substituted "for the purchase of any automobile * * * a sum exceeding two thousand five hundred dollars ($2,500)" for "for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars ($1,000.00)" and raised the maximum duration of a contract to be let without a vote from three to five years; in the second paragraph, substituted "two thousand five hundred dollars ($2,500.00)" for "one thousand dollars ($1,000.00)," inserted "an" before "amount," raised the maximum term of installments from three to five years, and inserted "and if such amount is extended * * * term of five (5) years * * * paid each year;".

The 1971 amendment deleted "of any building" after "construction" in the first sentence of the first paragraph; increased the minimum contract amounts specified in the first and second paragraphs from $2,500 to $4,000; and made a minor change in phraseology. The final paragraph of the section was omitted from the 1971 act; however, the Montana supreme court held in Morrison-Maierle, Inc. v. City of Forsyth, — M —, 500 P 2d 395, that deletion of that paragraph was not within the title of the 1971 act and that omission thereof was unconstitutional.

Installment Contracts

This section expressly authorizes an alternate method of financing construction of municipal buildings to that of borrowing or a bond issue, namely by installment contract. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

Professional Services

Senate Bill 288, Chapter 371, Laws of 1971, which amended this section, title of which was "An act amending section 11-1202, RCM 1947, to increase the monetary limitation on purchases," and eliminated last paragraph of this section excepting from bid requirements contracts for professional, technical, engineering and legal services, without reference thereto in title of bill, was in violation of article IV, section 23, Montana constitution. Morrison-Maierle, Inc. v. City of Forsyth, — M —, 500 P 2d 395.

11-1202.1. Division of contracts to circumvent bidding procedures prohibited. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971.

Title of Act

An act to provide that a city or town shall not circumvent any competitive bidding procedures with respect to the letting of a contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS—CITY WARRANTS

Section
11-1302. Allowance and payment of claims—cash basis.
11-1307. City warrants—rate of interest.
11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1302. (5079) **Allowance and payment of claims—cash basis.** All accounts and demands against a city or town must be submitted to the council, and if found correct, must be allowed and an order made that the

demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid, and the treasurer must pay the same out of the proper fund; provided, however, that in case the total indebtedness of a city or town has reached the limit of five per cent (5%) of the value of taxable property therein, it shall be lawful for, and said city or town is hereby authorized and empowered, to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe; and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which said advance shall have been made; and provided, further, that before the payment of the current expenses above mentioned, the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R. C. M. 1921; amd. Sec. 2, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "five per cent (5%) of the value of taxable property therein" for "three per cent provided in section 6 of article XIII of the constitution of the state of Montana" in the first proviso.

11-1305. (5080) **Defective highways and public works, etc.**

Waterworks

Municipalities' liability arising from negligent construction, maintenance and operation of a waterworks system is the same as a private corporation or individual, and the city is charged with exercising ordinary care in the performance of its functions. Roberts Realty Corp. v. City of Great Falls, — M —, 500 P 2d 956.

When Notice Not Necessary

A municipality is charged with notice of what a reasonable inspection would disclose and jury was entitled to determine that a more precise and reasonable manner of inspection would have dictated replacement of a water main and consequent avoidance of damage; notice is not necessary when defective condition of pipe is due to the direct act of the municipality or of those acting by its authority, including cases of defects in original construction. Roberts Realty Corp. v. City of Great Falls, — M —, 500 P 2d 956.

11-1307. (5081) **City warrants—rate of interest.** When any warrant, drawn upon the treasurer of a city or town, pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must endorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the section "and not to exceed six per cent per annum."

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969.

Amendments

The 1969 amendment substituted "funds" for "money" before "to pay such city or town warrants" in the first sentence of subsection (1); and inserted "including interest * * * time of purchase" in the last sentence of subsection (2).

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

Section
11-1414. Deposit in all-purpose fund of revenues from special sources supported.

11-1403. (5083.3) **Estimates of revenues and disbursements, etc.**

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(f).

11-1411. (5083.10) **State examiner to make rules and regulations, etc.**

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(f).

11-1414. Deposit in all-purpose fund of revenues from special sources supported. Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses and any other operation supported in part or whole from an appropriation of the all-purpose levy, and not otherwise provided by law.

History: En. Sec. 1, Ch. 131, L. 1973.

Title of Act

An act requiring cities and towns making the all-purpose levy to deposit money received from other sources in the all-purpose general fund and requiring that the provisions of the all-purpose levy statutes be construed in conjunction with the Municipal Budget Law.

CHAPTER 16—JUDICIAL POWERS—POLICE COURTS

Section
11-1602. Jurisdiction of police courts.

11-1602. (5088) **Jurisdiction of police courts.** The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. to 4. * * * [Same as parent volume.]

5. Possession of beer or liquor by persons under the age of eighteen (18) years in violation of section 94-35-106.2.

6. Selling, giving away or disposing of intoxicating liquor to minors in violation of section 94-35-106.

The police court shall have no jurisdiction of any civil cause, except as provided in the next section.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971; amd. Sec. 11, Ch. 94, L. 1973. Cal. Pol. C. Sec. 4426.

Amendments

The 1971 amendment reduced the age specified in subdivision 5 from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivision (5) from nineteen to eighteen years; and made minor changes in style.

11-1603. (5089) **Jurisdiction for violation of ordinances, etc.**

Penalty Assessment on Fines

Statute providing for penalty assessments in addition to fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which might be imposed. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

Section
11-1803. Terms of members of police force.
11-1814. Qualifications of policemen.
11-1815. Salary of chief of police.
11-1817. Age restriction on policemen—not applicable to veterans, present members and police reserves.

11-1821. Payment of police reserves.
11-1821.1. Police pension payments exempt from creditor process.
11-1829. Trustees' duties—auditing of fund—investment—report on retirement of policemen.
11-1832. Minimum wage of police in first and second class cities.
11-1832.2. Overtime compensation.

11-1803. (5097) **Terms of members of police force.** All appointments to the police force must be appointed by the mayor or in those cities operating under the commission-manager plan, the manager thereof, and confirmed by the city council or commission, but no such appointment must be made, until an application for such position on the police force has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof, and by him referred to the police commission, where such commission exists, and such applicant has successfully passed the examination required to be held by such police commission, and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor or in those cities operating under the commission-manager plan, the manager thereof. Every applicant who has passed such examination and received such certificate must first serve for a probationary term of not more than one (1) year. At any time before the end of such probationary term, the mayor or in those cities operating under the commission-manager plan, the manager thereof, may revoke such appointment. After the end of such probationary period, and within thirty days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force, and shall hold such position during good behavior, unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R. C. M. 1921; amd. Sec. 2, Ch. 119, L. 1923; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973.

Amendments

The 1973 amendment extended the maximum probationary term provided for by the second sentence from six months to one year.

11-1814. (5106) **Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty (40) years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five (65) years, or who shall have served continuously as a police officer for a period of not less than twenty-five (25) years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

A police officer must be a citizen of the United States, and meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 56 and once by Ch. 60. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 47, Laws of 1971, reduced the minimum appointment age for policemen from twenty-one to twenty years.

Chapter 66, Laws of 1971, added to the second paragraph a proviso permitting the police commission to waive residency requirements.

Chapter 56, Laws of 1973, deleted from the second paragraph provisions that a police officer "must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list"; deleted the proviso added to the second paragraph by chapter 66, Laws of 1971; and made minor changes in style.

Chapter 60, Laws of 1973, repeated the changes made in the second paragraph by Chapter 56; added "and meet the minimum qualifying standards for employment promulgated by the board of crime control" at the end of the second paragraph; and deleted a third paragraph reading: "Every police officer must be able to speak and write understandingly the English language."

11-1815. (5107) **Salary of chief of police.** That from and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than six hundred fifty dollars ($650) per month for the first year of service, and thereafter of at least six hundred fifty dollars ($650) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969.

Amendments

The 1969 amendment substituted "1969" for "1957" and raised the minimum salary from $450 to $650 per month.

11-1817. (5108.1) **Age restriction on policemen—not applicable to veterans, present members and police reserves.** The members of the police department on the active list of any city at the time of their appointment under this act shall not be less than eighteen (18) years of age, nor more than thirty-five (35) years of age, but this restriction shall not apply to any member of any present police department, nor to police reserves hereinafter provided for nor to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service be not less than three (3) months.

History: En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the minimum age for policemen from twenty-one to eighteen years; and made a minor change in style.

11-1821. (5108.5) **Payment of police reserves.** (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of the city or town, he shall thereafter be paid in monthly payments from the

funds in this act provided for, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service; provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one per cent (1%) per year of additional service up to a maximum of sixty per cent (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves' fund, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service prior to the date of his demise or prior to the date the policeman or officer passes to the police reserve list. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen (15) years younger than her husband, unless she shall have been married to and living with her husband for ten (10) years immediately preceding his death. If the policeman or officer leaves a dependent minor child, or dependent minor children, then upon the death of the policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one (1) dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until the minor child, or minor children, reach the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the beneficiaries shall not be made if the payments require an increase in the millage tax levy provided by section 11-1823, R.C.M. 1947.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of the child or children, for the use of the minor, until the minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the prorata payments to the child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married.

(4) The term "policeman," or "police officer,' includes all those on the reserve list, as well as "active police," "police officer," and "patrolman," or any of those terms.

(5) Before any payments are made to any member of the police reserve, the governing body of the city shall, forthwith, determine the

eligibility of such member for payments and the amount thereof in accordance with the terms of this section.

History: En. Sec. 5, Ch. 100, L. 1927; amd. Sec. 5, Ch. 120, L. 1929; amd. Sec. 1, Ch. 15, L. 1939; amd. Sec. 1, Ch. 69, L. 1951; amd. Sec. 1, Ch. 45, L. 1953; amd. Sec. 1, Ch. 176, L. 1955; amd. Sec. 1, Ch. 369, L. 1971; amd. Sec. 1, Ch. 393, L. 1973.

Amendments

The 1971 amendment added the proviso to subsection (1).

The 1973 amendment substituted "base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service" for "salary he was receiving during the year prior to the time he passed to the police reserve list" immediately before the proviso to subsection (1); substituted "one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service" for "one-half (½) the salary such policeman or officer was receiving during the year" in the first sentence of subsection (2); substituted "beneficiaries" for "surviving widow and/or children" near the end of subsection (2); added subsection (5); and made minor changes in style and phraseology.

11-1821.1. Police pension payments exempt from creditor process. The benefits provided in sections 11-1814 and 11-1821, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency or other process of law, and are unassignable.

History: En. 11-1821.1 by Sec. 1, Ch. 263, L. 1973.

Title of Act

An act to exempt police pension payments payable under sections 11-1821 and 11-1814, R. C. M. 1947, from attachment and other legal processes.

11-1829. (5108.13) **Trustees' duties—auditing of fund—investment—report on retirement of policemen.** The board of trustees of said fund, shall audit the same from time to time at least twice during each year, and report the condition of said fund annually to the city or town council on or before the first day of April of each year. And the said board of trustees, shall invest the money in said fund from time to time as may be directed by the city or town council. The money of said fund shall be invested only in bonds of the United States or of the state of Montana, or bonds or warrants of the city or town, in which said fund exists, which are general liabilities of the whole city or town, or in certificates of deposit issued by any state or national bank operating in Montana. And said trustees shall make sale of such bonds, securities, or certificates when desirable and as directed by the city or town council. All such bonds, warrants, and certificates shall be deemed part of the said fund and shall be kept in the possession of the city or town treasurer, and the treasurer shall be responsible therefor in the same manner as he is for all other moneys or funds of the city or town. Before any member of the police department is placed on the reserve list by the city council, the said board of trustees of said fund shall report to the city council in writing their recommendations as to whether or not such member shall be placed upon said reserve list.

History: En. Sec. 13, Ch. 120, L. 1929; amd. Sec. 1, Ch. 84, L. 1971.

Amendments

The 1971 amendment inserted "or in certificates of deposit issued by any state

or national bank operating in Montana" at the end of the third sentence; inserted references to certificates in the fourth and fifth sentences; and made minor changes in phraseology and punctuation.

11-1832. (5108.16) **Minimum wage of police in first and second class cities.** (1) After July 1, 1973, each duly confirmed member of a police department of cities of the first class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work, of at least six hundred dollars ($600) minimum per month for the first year of service, and thereafter of at least six hundred dollars ($600) minimum a month plus one per cent (1%) of the minimum base monthly salary of six hundred dollars ($600) for each additional year service up to and including the twentieth year of additional service. After July 1, 1973, each duly confirmed member of a police department of cities of the second class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work, of at least six hundred dollars ($600) minimum per month for the first year of service, and thereafter of at least six hundred dollars ($600) minimum per month plus one per cent (1%) of the minimum base monthly salary of six hundred dollars ($600) for each additional year service up to and including the twentieth year of additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973.

Compiler's Notes

As amended, this section did not contain a subsection (2).

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "and second" between "cities of the first" and "class," raised the minimum monthly wage base in cities of the first class from $400 to $525; and added the second sentence, raising the minimum monthly wage base in cities of the second class from $400 to $475.

The 1973 amendment changed the effective date of the section from July 1, 1969 to July 1, 1973; increased the minimum salary for policemen in first class cities from $525 to $600 a month; increased the minimum salary of policemen in second class cities from $475 to $600 per month; and made minor changes in style and phraseology.

11-1832.2. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under section 41-2303 (b).

History: En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973.

Title of Act

An act to provide for time and one-half pay for overtime for police officers.

11-1834. Annual state payments to municipality with police department.

Conditions Attached to Appropriation

Where title of appropriation bill indicated that its purpose was to provide for annual payment to cities and towns for police reserve fund, section of statute which contained restrictions on such payments, contrary to provisions of Metropolitan Police Law (11-1801 through 11-1837) was repugnant to article V, section 23 of state constitution and therefore void. City of Helena v. Ombolt, 155 M 212, 468 P 2d 764.

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section
11-1905. Qualifications of firemen.
11-1912. Tax levy for fund.

11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.
11-1925. Pensions to retired firemen.
11-1926. Disability pension.
11-1927. Pensions to widows and orphans.
11-1927.1. Payment of benefits in absence of widow or orphan.
11-1932. Minimum wages of firemen in cities of first and second class.

11-1905. (5113) **Qualifications of firemen.** The qualifications of firemen shall be that they shall not, at the time of original appointment, be over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk, and at the option of said city or town shall be qualified voters of the city or town. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969.

Amendments

The 1969 amendment deleted "be qualified voters of the city or town," after "they shall," added "and at the option * * * city or town" at the end of the first sentence and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 217, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

11-1912. (5119) **Tax levy for fund.** For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to two per centum (2%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as hereinbelow set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. * * * [Same as parent volume.]

2. Whenever the total amount of the fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, but more than one per centum (1%) of said taxable valuation, and when the special tax levy of one (1) mill on each dollar of taxable valuation within said city, town or municipality will cause such fund, considering all sources of income, and all payments to be made out of such fund, to exceed two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, the tax levy shall be such fractional part of

one (1) mill as will produce sufficient revenue to cause the fire department relief association's disability and pension fund to be more than two per centum (2%) of the taxable valuation of all taxable property in said city, town or municipality.

3. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 71, L. 1907; Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965; amd. Sec. 2, Ch. 208, L. 1967.

Compiler's Notes

Subdivision 2 of this section is reprinted herein to correct an error in the printing of the section in the parent volume.

11-1914. Duties of trustees—investment of surplus funds.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(g).

11-1919. (5127) **State auditor to pay fire department relief association out of license fees collected from insurance companies.** At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths (25/100) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

1. and 2. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd. Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969.

Amendments

The 1969 amendment inserted the second paragraph.

11-1923. (5130) **Annual report of the secretary and treasurer, etc.**

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(g).

11-1925. (5132) **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty

and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half (½) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars ($75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963; amd. Sec. 5, Ch. 208, L. 1967; amd. Sec. 1, Ch. 267, L. 1973.

Amendments

The 1973 amendment inserted the third sentence in the first paragraph.

11-1926. (5133) **Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half (½) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five ($75) dollars per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963; amd. Sec. 6, Ch. 208, L. 1967; amd. Sec. 2, Ch. 267, L. 1973.

Amendments

The 1973 amendment inserted the third sentence.

11-1927. (5134) **Pensions to widows and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half (½) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to a widow or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five ($75) dollars per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963; amd. Sec. 7, Ch. 208, L. 1967; amd. Sec. 3, Ch. 267, L. 1973.

Amendments

The 1973 amendment inserted the third sentence.

11-1927.1. Payment of benefits in absence of widow or orphan. If any fireman shall die not leaving a widow or orphan, the fire depart-

ment relief association shall compute the total contributions made to the fund by said deceased member, and if the deceased member has designated, in writing, to the association a beneficiary to whom such funds shall be paid, the association shall issue a warrant for said sums payable to that beneficiary; if the deceased member has not nominated a beneficiary, said contributions shall be paid to his estate.

History: En. Sec. 1, Ch. 276, L. 1973.

Title of Act

An act to establish procedures for the disposition of contributions made to the fire department relief association funds by unmarried members.

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1973, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least six hundred dollars ($600) per month for the first year of service, and thereafter of at least six hundred dollars ($600) minimum per month plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. From and after July 1, 1973, there shall be paid to each duly appointed and confirmed member of the fire department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work, of at least six hundred dollars ($600) per month for the first year of service, and thereafter of at least six hundred dollars ($600) minimum per month plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973.

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "or second" between "cities or towns of the first" and "class," raised the minimum wage of firemen in first class cities from $400 per month to $525; and added the second sentence, raising the minimum wage of firemen in second class cities from $400 per month to $475.

The 1973 amendment changed the effective date of the act from July 1, 1969 to July 1, 1973; increased the minimum monthly wage in first class cities from $525 to $600, and in second class cities from $475 to $600.

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

Section

11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.
11-2010. Trustees of fire districts—mutual aid agreements.
11-2022. Disability, death, insurance and pension benefits.
11-2023. Qualification for compensation.
11-2024. Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.
11-2025. Payment of a claim—beneficiaries of decedent.

11-2008. (5148) **Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.** (a) The board of county commissioners is authorized to establish

fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by mailing a copy of the notice by first class mail to each freeholder in the district at the address above shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty(20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) * * * [Same as parent volume.]

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners

shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d). * * * [Same as parent volume.]

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1. Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969.

Amendments

The 1969 amendment inserted a requirement for notice "by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll" in subsections (a) and (c).

Effective Date

Section 2 of Ch. 45, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

11-2010. (5149) **Trustees of fire districts—mutual aid agreements.** (a) and (b). * * * [Same as parent volume.]

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, which has any boundary line lying within five (5) straight line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district, to property included within such district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any such fire district may elect to make such a contract. Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within five (5) straight line miles of any boundary line of such district. Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county; and such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973.

Amendments

The 1969 amendment added the last two sentences to subsection (c).

The 1973 amendment substituted "which has any boundary line lying within five (5) straight line miles of any boundary line" in the first and second sentences of subdivision (c) for "lying within five (5) miles of the farthest limits"; substituted "such a contract" at the end of the first sentence of subdivision (c) for "a contract with the city fire department for fire protection, or to be included in the fire district protection facilities"; substituted "lying outside of such district or any other district or city limits, but within five (5) straight line miles of any boundary line" in the third sentence of subdivision (c) for "lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest limits"; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 333, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 333, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

11-2022. (5158.3) **Disability, death, insurance and pension benefits.** 1. to 4. * * * [Same as parent volume.]

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023,

and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars ($1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars ($20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars ($50) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars ($50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year.

History: En. Sec. 3, Ch. 65, L. 1935; amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, Ch. 118, L. 1965; amd. Sec. 3, Ch. 160, L. 1967; amd. Sec. 1, Ch. 80, L. 1971; amd. Sec. 1, Ch. 199, L. 1973.

Amendments

The 1971 amendment removed from the first sentence of subsection 5 a requirement that the volunteer fireman himself complete and file the claim; substituted "as provided in this act" for "throughout the remainder of his lifetime" in the latter part of the first sentence of subsection 5; substituted "claimant" for "volunteer fireman" throughout subsection 5; inserted the next to last sentence in subsection 5; and made minor changes in phraseology.

The 1973 amendment substituted "the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five per cent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year," for "said excess amount"; increased the maximum pension from twenty-five to fifty dollars per month; and made minor changes in style and phraseology.

11-2023. (5158.4) **Qualification for compensation.** (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) Years of service. (I) To qualify for full participation he must have completed a total of at least twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village. (II) If prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire company, or by personal relocation due to transfer or loss of employment, or by personal disability, or by other factor beyond his reasonable control, then he may qualify for partial participation if he has completed at least ten (10) years' service; in that event, he shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20). (III) Provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars ($2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age);

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company;

(D) He must have ceased to be an active member of any volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village, and if he applies for and receives pension benefits hereunder, he shall not thereafter be eligible to become an active member of any such volunteer fire company;

(E) He must not be eligible for benefits under any fire department relief association organized in any incorporated area.

(F) Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969; amd. Sec. 2, Ch. 80, L. 1971; amd. Sec. 2, Ch. 199, L. 1973.

Amendments

The 1969 amendment inserted "area" before "town or village" in subsection (1); and substituted "two thousand five hundred dollars ($2,500)" for "seven hundred fifty dollars ($750)" and added class "ten (10)" in subdivision (2)(A).

The 1971 amendment reduced the service requirements specified in subdivision (2) (A) from twenty to ten years; inserted in subdivisions (2) (A) and (2) (B) identical provisos reading: "provided, that in the case of any volunteer fireman having completed at least ten (10) years' but less than twenty (20) years' service as an active volunteer fireman, then the claimant hereunder shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20)"; and made minor changes in phraseology.

The 1973 amendment divided subdivision (2) (A) into clauses with Roman numerals; inserted "To qualify for participation" at the beginning of clause (2) (A) (I); increased the service required by clause (2) (A) (I) from ten to twenty years; substituted clause (2) (A) (II) for the proviso inserted in subdivision (2) (A) by the 1971 amendment; deleted from subdivision (2) (B) the proviso added by the 1971 amendment; divided subdivision (2) (C) into subdivisions (2) (C) and (2) (F); inserted new subdivisions (2) (D) and (2) (E); and made minor changes in style.

Effective Date

Section 3 of Ch. 199, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

11-2024. (5185.5) **Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.** 1. A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one (1) year from the date of disability.

2. A claimant claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by the public employees' retirement system, which claim shall contain the name, address and date of birth of the claimant, and of the volunteer fireman if other than the claimant; the fiscal year for which eligibility shall commence; the years during which service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by the public employees' retirement system as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified persons and the claimant shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

History: En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1965; amd. Sec. 4, Ch. 160, L. 1967; amd. Sec. 3, Ch. 80, L. 1971.

Amendments

The 1971 amendment substituted "claimant" or "person" for "volunteer fireman" in two places in subsection 2; inserted "and of the volunteer fireman if other than the claimant" after "date of birth of the claimant" in the first sentence of subsection 2; and made minor changes in phraseology and style.

11-2025. (5158.6) **Payment of a claim—beneficiaries of decedent.** 1. Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any otherwise qualified volunteer fireman before reaching the age of fifty-five (55) years, or in the event of the death of any such volunteer fireman after he has qualified for payments hereunder but before he has received payments hereunder totaling at least two thousand dollars ($2,000); and if such deceased volunteer fireman shall have left a widow, then such pension shall be paid or continue to be paid to said widow by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, until her death or remarriage; or if said deceased volunteer fireman shall have left no widow but shall have left a child or children under the age of eighteen (18) years, then such pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for his widow or children, then such pension shall terminate, and no further payments shall be made hereunder, when a total of two thousand dollars ($2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965; amd. Sec. 4, Ch. 80, L. 1971.

Amendments

The 1971 amendment completely rewrote the first proviso to subsection 2, for previous text of which see parent volume; inserted the second proviso in subsection 2; deleted from the end of subsection 2 a clause reading "and in any event such pension shall terminate no later than the end of the fiscal year in which death occurs"; and made minor changes in phraseology and style.

Repealing Clause

Section 5 of Ch. 80, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 80, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

11-2026. (5158.7) **Administration of act.**

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section
11-2201. Special improvements—powers of city council.
11-2206. Protests against proposed work.
11-2214. Methods of payments of improvements.
11-2214.2. Assessments and bonds for pedestrian malls or off-street parking.
11-2216. Sewer systems.
11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems.
11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
11-2226. Construction of sidewalks, curbs and gutters without formation of special improvement district.
11-2226.1. Construction or replacement of alley approaches without formation of special improvement district.
11-2227. Interest on assessments.
11-2231. Form of bonds and warrants.
11-2249. Bonds and warrants—interest—redemption.
11-2269. Special improvement district revolving fund.
11-2270. Transfers from general fund and tax levy for revolving fund.
11-2271. Loans from revolving fund for paying improvement district bonds and warrants.
11-2272. Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds.
11-2275. Creation and maintenance of fund.
11-2277. Determination of provisions of bonds—maturity—interest—form.

11-2201. (5225) **Special improvements—powers of city council.** All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, alleys, places, or courts, for the purposes of this chapter, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to acquire private property for right of way, and to order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

Further, that in addition to the powers heretofore granted, when the public interest or convenience requires, the governing body of a municipality may:

(1) to (4) * * * [Same as parent volume.]

(a) and (b) * * * [Same as parent volume.]

(c) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of section 11-2204, and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in section 11-2204.

(d) and (e) * * * [Same as parent volume.]

(5) Create special lighting districts on any street or streets or public highway therein or portions thereof for the purposes of lighting such street or streets or public highway and is hereby empowered to assess

such costs for installation and maintenance to property abutting thereto and to collect such costs by special assessment against said property.

Further, that in addition to the powers heretofore granted, the city or town council is empowered to make assessments in the manner provided in section 11-2245 hereafter on property abutting said street or highway and lying outside the boundaries of said city or town, so long as that portion of the street or public highway to be lighted is adjacent to the boundary line of said city or town or lies partially within said city or town or extends from one point within said city or town to another point within said city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R. C. M. 1921; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971.

Amendments

The 1971 amendment added subdivision (5); and made a minor change in style.

11-2206. (5229) **Protests against proposed work.** (1). * * * [Same as parent volume.]

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running (at) a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

(3). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969.

Amendments

The 1969 amendment substituted "fifty per cent" for "forty per cent" twice in the first proviso in subsection (2).

Effective Date

Section 2 of Ch. 149, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

11-2214. (5238) **Methods of payments of improvements.** (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the following methods of assessment; unless otherwise provided in subsection 1 (c):

(a) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; provided, however, that the city council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue or alley intersections, out of any funds in its hands, available for that purpose, or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district. In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within twenty-five (25) feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of land within the district lying within twenty-five (25) feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

(b) * * * [Same as parent volume.]

(c) Where curbs, gutters, alley approaches, streets, crossings and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis, as set forth under subsection 1 (a); other portions of the improvements upon a lineal feet basis, as set forth under subsection 1 (b); and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts or parcel of land served by the utility connection or connections; all within the same special improvement district, so long as such assessment is equitable.

(d) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this act, the city council or commission shall assess against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved, in proportion to the benefits received by each tract of land within said district. In determining the benefit to be received by each parcel of land, the city council or commission shall consider:

(i) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(ii) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(iii) the assessed value of each parcel within said district;

(iv) the square footage of each parcel within said district as it relates to the whole;

(v) the square footage of floor space in any improvements on the parcel and the various uses of such floor space;

(vi) the availability of existing on-site parking space on any parcel of land within the district. Provided, however, that before any improvement district can be created or financed under the provisions of this section, the city council or commission must, prior to the creation of said district, pass a city ordinance setting forth therein the formula to be used in determining the assessment of each lot or parcel within said district, which said formula must include but shall not be limited to the items to be considered as set forth hereinabove. And provided further than prior to the adoption of any such ordinance by the city council or commission, the city council or commission shall make a determination of the formula for the method of assessment as set forth above, considering all of the factors above set forth, and shall hold a public hearing after due notice and at such hearing all persons concerned may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time. After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R. C. M. 1921; amd. Sec. 1, Ch. 163, L. 1925; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973.

Amendments

The 1971 amendment added "unless otherwise provided in subsection 1(c)" to the end of the preliminary paragraph of subsection (1); inserted subdivision (1)(c); and made a minor change in punctuation.

The 1973 amendment added subdivision (d), including paragraphs (i) to (vi), to subsection (1); and made a minor change in style.

Effective Date

Section 2 of Ch. 85, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

11-2214.2. Assessments and bonds for pedestrian malls or off-street parking. (a) to (c) * * * [Same as parent volume.]

(d) The bonds shall be issued as of the date of the warrant, and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring ninety (90) days after the date of the bond, and shall be for the interest accrued at that time.

(e) * * * [Same as parent volume.]

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding eight per cent (8%) per annum" from the end of the first sentence of subsection (d).

11-2216. (5239) **Sewer systems.** (1) and (2). * * * [Same as parent volume.]

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed by the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4). * * * [Same as parent volume.]

(5) Any twenty-five (25) or more electors of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1933; amd. Sec. 3, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "who must be taxpaying freeholders, as shown by the last assessment for taxable purposes"

following "five (5) per cent of the qualified electors" in the first part of subsection (3); deleted "who must be taxpaying freeholders" following "qualified electors" later in subsection (3); and substituted "electors" for "freeholders" near the beginning of subsection (5).

11-2217. Cities and towns may establish sewage treatment and disposal plant systems and water supply and distribution systems. Any city or town may when authorized so to do by a majority vote of the qualified electors voting on the question establish, build, construct, reconstruct and/or extend a storm and/or sanitary sewerage system and/or a plant or plants for treatment or disposal of sewage therefrom, or a water supply and/or distribution system, or any combinations of such systems, and may operate and maintain such facilities for public use, and in addition to all other powers granted to it, such municipality shall have authority, by ordinance duly adopted by the governing body to charge just and equitable rates, charges or rentals for the services and benefits directly or indirectly furnished thereby. Such rates, charges or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The sewer charges may be fixed on the basis of water consumption or any other equitable basis the governing body may deem appropriate and, if the governing body determines that the sewage treatment and/or storm water disposal prevents pollution of sources of water supply, may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of such facilities and services. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

In this act "qualified electors" shall mean registered electors of the municipality. The question of building, constructing, reconstructing or extending the system, plant or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions. Any election under this act may be called by a resolution of the governing body which it may adopt without being previously petitioned to do so.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality" from the end of the first sentence of the second paragraph.

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections

11-2308 to 11-2310, inclusive; and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) to (8) * * * [Same as parent volume.]

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "which bonds shall bear interest at a rate * * * six per centum (6%) per annum" after "sections 11-2308 to 11-2310, inclusive" near the middle of subsection (1); and made a minor change in punctuation.

Installment Contracts

Installment payment of construction costs of both separate and joint use facilities of city shop complex to be used in part by water and sewer department could be considered "normal, reasonable and current expenses of operation and maintenance" of the water and sewer systems and thus department funds could be used to pay proportionate share of construction costs although they were derived from water and sewer charges which otherwise would be applied toward retirement of outstanding bonds. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

11-2220. Income to be kept separately.

Power to Allocate Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

11-2226. (5244) **Construction of sidewalks, curbs and gutters without formation of special improvement district.** The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk, curb and gutter fund, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "which warrants shall bear interest at the rate of six per centum (6%) per annum" before "and the council may provide for the payment of said interest annually" near the end of the third paragraph; and made minor changes in style.

11-2226.1. Construction or replacement of alley approaches without formation of special improvement district. The city council may order

alley approaches constructed or replaced adjacent to any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such alley approaches constructed or replaced, such order shall be entered upon the minutes of the council and shall name the street along which said alley approach is to be constructed or replaced. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in this section. After the making of such order, written notice thereof shall be given the owners or agents of all adjacent owners having access to their properties by said alley approach, in such a manner as the council may direct. If the owners or agents of all adjacent owners of such lots or parcels of land shall fail or neglect for a period of thirty (30) days after the date of service of such notice to cause such alley approaches to be constructed or replaced, the city may construct or cause such alley approach to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the lots or parcels of land having access to said property via the said constructed alley approaches.

When any such alley approach is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special alley approach fund, which warrants shall bear interest at the rate of up to six per cent (6%) a year, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said alley approach may be spread over a term of not to exceed eight (8) years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land having access to said property via the said alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971.

Title of Act

An act providing for construction or replacement of alley approaches without formation of special improvement districts.

11-2227. (5245) **Interest on assessments.** Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged, and the treasurer, in collecting such special assessment taxes, if the same are payable in one (1) installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "simple interest shall be charged" near the beginning of the section; and made a minor change in style.

11-2231. (5249) **Form of bonds and warrants.** All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. ————————
United States of America,
State of Montana

Warrant or Dollars
(Bond No. ——) $————

Interest at the rate of ———— per cent per annum, payable annually. Special improvement district coupon warrant or bond

————————, Montana

Issued by the city of ————————, Montana.

The treasurer of the city of ————————, Montana, will pay to bearer, the sum of ———— dollars as authorized by resolution No. ———— as passed on the ——— day of ———, 19—, creating special improvement district No. ———— for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ————————, Montana.

This warrant (or bond) bears interest at the rate of ——— per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of ——— in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ————————, Montana relating to the issuance thereof.

(seal)
Dated at ————————, Montana, this —— day of ————, 19—.
City of ————————, Montana.

By: ————————, Mayor
————————, City Clerk

Registered at the office of the city treasurer of ————————, Montana, this ———— day of ————————, 19——.

———————— City Treasurer

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred ($100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six (6%) per cent per annum" after "and shall bear interest" near the beginning of the first sentence of the paragraph following the form for bonds and warrants.

11-2249. (5263) **Bonds and warrants—interest—redemption.** All cost and expenses incurred in the construction of the improvement specified in this act shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance drawn against a fund to be known as "Special Improvement Lighting District

No. ——— Fund." Said warrants or bonds shall be in the denomination of one hundred dollars ($100) or fractions or multiples thereof; and may be issued in installments. Such warrants or bonds shall be redeemed by the treasurer when there is money in the fund against which said warrants or bonds are issued available therefor, and may extend over a period not to exceed eight (8) years, and shall bear interest from the date of registration thereof, until called for redemption or paid in full, interest to be payable annually on the first day of January of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk. The requirements of this section shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R. C. M. 1921; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate not exceeding six per cent (6%) per annum" after "shall bear interest" in the third sentence; and made minor changes in style.

11-2269. (5277.1) **Special improvement district revolving fund.** The city or town council or commission of any city or town which has heretofore created, or may hereafter create, any special improvement district or districts for any purpose, may in its discretion, as to such district or districts heretofore created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any special improvement district bonds or sidewalk, curb and alley approach warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 24, L. 1929; amd. Sec. 1, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted "sidewalk, curb and alley approach" before "warrants" in the latter part of the section.

11-2270. (5277.2) **Transfers from general fund and tax levy for revolving fund.** For the purpose of providing funds for such revolving fund the city or town council

(1) * * * [Same as parent volume.]

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding special improvement district bonds or sidewalk, curb and alley approach warrants.

History: En. Sec. 2, Ch. 24, L. 1929; amd. Sec. 2, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted "or sidewalk, curb and alley approach" before "warrants" at the end of subdivision (2); and made a minor change in phraseology.

11-2271. (5277.3) **Loans from revolving fund for paying improvement district bonds and warrants.** (1) Whenever any special improvement district bond or sidewalk, curb and alley approach warrants, or any interest thereon, shall be, at the time of the passage of this act, or shall thereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon, or in the case of such bonds or warrants due at the time of the passage of this act, such part of the amount due on such bond or warrant, whether it be for principal or for interest or for both as the council may in its discretion elect or determine shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with any public offering of special improvement district bonds or sidewalk, curb and alley approach warrants, the city or town council may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 11-2270 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by said section 11-2270, which said undertakings and agreements shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb and alley approach warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 158 and once by Ch. 255. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1971 acts.

Amendments

Chapter 158, Laws of 1971, deleted from the end of subsection (1) a proviso and a sentence requiring that the revolving fund be approved by the taxpayers. For prior text, see parent volume.

Chapter 255, Laws of 1971, inserted "sidewalk, curb and alley approach" before "warrants" near the beginning of subsection (1) and near the beginning and near the end of subsection (2); and made a minor change in phraseology.

11-2272. (5277.4) **Lien for loans from revolving fund—surplus district funds transferred to revolving fund, investment of funds.** Whenever any loan is made to any special improvement district fund or sidewalk, curb and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys

in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district or sidewalk, curb and alley approach warrants have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

Surplus reserves not needed for immediate use, may from time to time be invested in securities of the United States or certificates of deposit, approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; amd. Sec. 4, Ch. 255, L. 1971.

Amendments

The 1971 amendment inserted "or sidewalk, curb and alley approach warrants" in two places in the first paragraph; and added the second paragraph.

11-2275. Creation and maintenance of fund. A supplemental revolving fund may be created by ordinance subject to the approval of a majority of the qualified electors voting upon the question at a general or special election. As used in this act "qualified electors" shall mean registered electors of the municipality. The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters and the ordinance may pledge to said fund all or any part of the said net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971.

Amendments

The 1971 amendment substituted "registered electors of the municipality" at the end of the second sentence for "registered electors whose names appear upon the last preceding assessment roll for state and county taxes as taxpayers upon property within the municipality."

11-2277. Determination of provisions of bonds—maturity—interest—form. Whenever the council has been authorized to issue bonds hereunder, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund. Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expenses, cost of the parking meters, and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued. The bonds may mature at one time, not ex-

ceeding the maximum maturity of the assessments to be levied for said improvement or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond ten (10) years from date thereof. Said bonds, as the council shall determine, shall be subject to redemption prior to maturity if so determined by the council, and may be payable at any suitable bank or trust company either within or without the state of Montana. The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine. The bonds issued hereunder shall be in substantially the form provided in section 11-2231 as modified by the provisions hereof.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "shall bear interest payable annually or semi-annually, not exceeding four and one-half (4½%) per cent per annum" after "Said bonds" at the beginning of the fifth sentence.

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section
11-2301. Creation of indebtedness—submission to taxpayers.
11-2303. Limitation on amount of indebtedness.
11-2304. Terms of bonds—rates of interest.
11-2306. Petition for election—form—proof.
11-2307.1. Resolution to issue bonds—when election required.
11-2310. Registration of electors.
11-2315. Sale of bonds.

11-2301. (5278.1) **Creation of indebtedness—submission to taxpayers.** Whenever the council or commission of any city or town having a corporate existence in this state, or hereafter organized under any of the laws thereof, shall deem it necessary to issue bonds pledging the general credit of the municipality for any purpose whatever, under its powers as set forth in any statute or statutes of this state, or amendments thereto, the question of issuing such bonds shall first be submitted to the electors of such city or town who are qualified to vote on such question, in the manner hereinafter set forth; provided, however, that it shall not be necessary to submit to such electors the question of issuing refunding bonds to refund bonds theretofore issued and then outstanding: or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state; provided further that no refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent (½ of 1%) less than the interest rate of the outstanding bonds to be refunded. In order to issue bonds to refund bonds theretofore issued and outstanding it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds, and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in this act for the sale and issuance of such bonds.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973.

Amendments

The 1973 amendment inserted "pledging the general credit of the municipality" near the beginning of the first sentence; and inserted "or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state" in the first proviso to the first sentence.

11-2303. (5278.3) **Limitation on amount of indebtedness.** No city or town shall issue bonds for any purpose in an amount which, with all outstanding and unpaid indebtedness, will exceed five per centum (5%) of the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system, or procuring a water supply or constructing or acquiring a water system for a city or town, which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, or for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted, which is unpaid or outstanding, shall not in the aggregate exceed ten per centum (10%) over and above the five per centum (5%) heretofore referred to, of the total value of the taxable property therein as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds shall not be deemed the incurring of a new or additional indebtedness, but shall be deemed merely the changing of the evidence of outstanding indebtedness.

History: En. Sec. 3, Ch. 160, L. 1931; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973.

Amendments

The 1973 amendment inserted "assessed" before "value of the taxable property therein" near the beginning of the section; deleted from the final sentence a definition of "value of the taxable property"; and made a minor change in phraseology.

11-2304. (5278.4) **Terms of bonds—rates of interest.** No bonds for any purpose shall be issued for a longer term than twenty (20) years, and when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than ten (10) years, provided that if the unexpired term of the bonds to be refunded shall be more than ten (10) years, then in such event, the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the city or town on any interest payment date after one-half (½) of the term for which they were issued has expired, and it shall be so recited in the bonds. The maximum rate of interest which any bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973.

Amendments

The 1971 amendment increased the maximum rate of interest of bonds authorized to be issued under this chapter from 6% to 7% per annum.

The 1973 amendment substituted "shall" for "may" before "be redeemable" in the second sentence; substituted "after one-half (½) of the term for which they

were issued has expired" for "five (5) years from the date of issue" in the second sentence; and made minor changes in phraseoolgy.

11-2306. (5278.6) **Petition for election—form—proof.** No bonds shall be issued by a city or town pledging the general credit of the municipality for any purpose, except to fund or refund warrants or bonds issued prior to and outstanding on July first, 1942, as authorized in section 11-2301, unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the city or town, and approved, as hereinafter provided. Such an election may be called by the city or town council or commission on its passage of the necessary resolution as hereinafter provided or after there has been presented to the council or commission a petition, asking that such election be held and question submitted, signed by not less than twenty per centum (20%) of the qualified electors of the city or town. Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) petition, if each purpose with an estimate of the amount of bonds to be issued therefor is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together, after being circulated and signed, so as to form a single complete petition before being delivered to the city or town clerk, as hereinafter provided. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating, such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the city or town clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate, under his official signature, which shall set forth:

(1) The total number of persons who are registered electors.

(2) * * * [Same as parent volume.]

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec, 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973.

Amendments

The 1971 amendment deleted "who are taxpayers upon property within such city or town and whose names appear on the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of the first sentence of the first paragraph; deleted "and whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town" from the end of subdivision (1); and substituted "registered electors of the city or town" at the end of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes, as taxpayers within such city or town."

The 1973 amendment inserted "pledging the general credit of the municipality"

near the beginning of the first sentence of the first paragraph; and substituted "Such an election may be called by the city or town council or commission on its passage of the necessary resolution as hereinafter provided or after there has been presented to the council or commission a petition" at the beginning of the second sentence for "and no such election shall be called unless there has been presented to the city or town council a petition."

11-2307. (5278.7) **Repealed.**

Repeal

Section 11-2307 (Sec. 7, Ch. 160, L. 1931), relating to submission to the electors of a petition for issuance of municipal bonds, was repealed by Sec. 5, Ch. 413, Laws 1973. For new law, see sec. 11-2307.1.

11-2307.1. Resolution to issue bonds—when election required. When the council or commission of any city or town deems it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the council shall pass and adopt a resolution which shall recite the purpose or purposes for which it is proposed to issue such bond, fix the amount of bonds to be issued for each purpose, determine the number of years through which such bonds are to be paid not exceeding the limits fixed in section 11-2303, and unless such bonds are revenue bonds not pledging the general credit of the municipality, making such provisions as are necessary for having the questions submitted to the qualified electors of the city or town at the next general city or town election or at a special election which the council or commission may call for such purpose. In cases where the bond issuance is proposed by petition the council or commission shall before submitting the measure to the electorate pass a resolution containing the information hereinabove required and in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition.

History: En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973.

Title of Act

An act authorizing cities and towns to hold elections on the issuance of general obligation bond issue without there first having been filed a petition calling such election; authorizing the issuance of revenue bonds without an election; amending sections 11-2301, 11-2306 and 11-2404, R. C. M. 1947; and repealing section 11-2307, R. C. M. 1947.

11-2310. (5278.10) **Registration of electors.** Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are entitled to vote at such election and shall prepare pre-

cinct registers for such election as provided in section 23-3012 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted from the beginning of the section a sentence reading "Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town"; deleted "who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.

11-2315. (5278.15) **Sale of bonds.** The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in determining the kind of bonds to be issued the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town, and the council shall accept the bid they shall judge most advantageous to the city or town. No attorneys fees, brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any and all bids and to sell the bonds at private sale if they deem it for the best interests of the city or town, provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 15, Ch. 160, L. 1931; amd. Sec. 8, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted the proviso to the third sentence; and deleted "shall not bear a greater rate of interest than six per centum (6%) per annum and" after "such bonds" in the proviso to the last sentence.

11-2319. (5278.19) **Delivery of bonds—payment for same, etc.**

Cross-References

Board of land commissioners functions transferred, Sec. 82A-205(1)(a).

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section
11-2402. Definitions.
11-2404. Authorization of undertaking—form and contents of bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof

and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building, convention facilities, public recreation facilities and public parking facilities; or other revenue-producing facilities and services authorized in these codes for cities and towns.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969.

Amendments

The 1969 amendment inserted ", convention facilities, * * * parking facilities" in the definition of "undertaking."

11-2404. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality without an election or, should the governing body in its sole discretion choose to submit the question to the electorate, when authorized by a majority of the qualified electors voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election.

Said bonds shall bear interest at such rate or rates not exceeding nine per cent (9%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars ($150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers

circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973.

Compiler's Notes

Section 16-1201, referred to in the second paragraph of this section, was repealed by Sec. 10, Ch. 280, Laws 1967. For similar provisions in current law, see sec. 16-1230.

Amendments

Chapter 158, Laws of 1971, substituted "a majority of the qualified electors" for "a majority of the taxpayers" in the first paragraph.

Chapter 234, Laws of 1971, included the change made by Ch. 158, and increased the maximum rate of interest on bonds authorized to be issued under this chapter from 6% to 9% per annum.

The 1973 amendment inserted "without an election or, should the governing body in its sole discretion choose to submit the question to the electorate" in the middle of the first paragraph; and deleted "provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election" from the end of the first paragraph.

Repealing Clause

Section 5 of Ch. 413, Laws 1973 read "Section 11-2307, R. C. M. 1947, is repealed."

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

Section
11-2702. Districts for effecting building restrictions.
11-2702.1. Community residential facility—defined.
11-2702.2. Foster, boarding homes, community residential facilities considered residential.
11-2705. Changes.

11-2702. (5305.2) **Districts for effecting building restrictions.** (1) For any or all of said purposes the local city or town council or other legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(2) The local city or town council, or other legislative body which has adopted a master plan pursuant to Title 11, chapter 38 may extend the application of its zoning or subdivision regulations or both beyond its limits in any direction, but not in a county which has adopted such regulations within the contemplated area; provided that a city of the first class as defined in section 11-201 of this code may not extend the application of its zoning or subdivision regulations or both more than three (3) miles beyond its limits, a city of the second class may not so extend more than two (2) miles beyond its limits, and a city or town of the third class may not so extend more than one (1) mile beyond its

limits. Provided, further, that where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, then the extension of zoning or subdivision regulations or both by these cities shall terminate at a boundary line agreed upon by the cities so concerned. Any city or town council or other legislative body, may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area. As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two (2) representatives from the unincorporated area which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to Title 11, chapter 38 and accompanying zoning or subdivision resolutions or both which include the area.

A city or town, which has as its plan of government the commission-manager plan, shall be excluded from the provision of section 11-2702 (2) which defines extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973.

Amendments

The 1971 amendment designated the former language as subsection (1) and added subsection (2).

The 1973 amendment inserted "a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or" in the fourth sentence of subsection (2); and inserted "existing" before "city planning board" in the same sentence.

11-2702.1. Community residential facility—defined. "Community residential facility" means a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care.

History: En. Sec. 1, Ch. 350, L. 1973.

Title of Act

An act providing that foster or boarding homes or community residential facilities serving eight (8) or fewer specified handicapped persons be considered as a residential use of property; be permitted to use all residential zones; and to permit cities and counties to require a conditional use permit to maintain such homes in residential zones.

11-2702.2. Foster, boarding homes, community residential facilities considered residential. A foster or boarding home operated under the provision of sections 10-520 through 10-523, or community residential facility and serving eight (8) or fewer developmentally disabled or otherwise handicapped persons, is considered a residential use of property for purposes of zoning if the home provides care on a twenty-four (24) hour a day basis.

The homes are a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provi-

sions of this paragraph; provided such home is licensed by the department of health and environmental sciences.

History: En. Sec. 2, Ch. 350, L. 1973.

11-2705. (5305.5) **Changes.** Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (¾) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929; amd. Sec. 1, Ch. 161, L. 1969.

Amendments

The 1969 amendment inserted "or of those adjacent * * * same block" before "or of those directly opposite * * *" in the second sentence.

11-2707. (5305.7) **Board of adjustment.**

Evidence at Hearing

Taking of additional evidence by district court on appeal from board of adjustment's denial of zoning variance was not abuse of discretion even though board did not present any additional evidence. Lambros v. Board of Adjustment of City of Missoula, 153 M 20, 452 P 2d 398.

CHAPTER 31—COMMISSION FORM OF GOVERNMENT

Section

11-3116. Bribery—false answers concerning qualifications of elector—voting by disqualified person.

11-3112. (5377) **Nomination of candidates, etc.**

Compiler's Notes

Sections 23-1220 to 23-1228, referred to in this section, were repealed by Sec. 248, Ch. 368, Laws 1969.

11-3116. (5379) **Bribery—false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector, for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election who has not met the residency requirements for voting as provided by the constitution of the state of Montana, or who is not of the

minimum age provided by the constitution of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500); and be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days.

History: En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1971.

Amendments

The 1971 amendment substituted "who has not met the residency requirements for voting as provided by the constitution of the state of Montana, or who is not of the minimum age provided by the constitution of the state of Montana" for "who has not been a resident of this state for one year next preceding said election or who is not twenty-one years of age"; and made minor changes in style.

11-3129. (5391) **Publication of report by council, etc.**

Compiler's Notes

Section 5-905, referred to in this section, was repealed by Sec. 6, Ch. 256, Laws 1971.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(h).

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section
11-3207. Manner of conducting election—canvassing votes.
11-3215. Nomination of candidates—primary election.
11-3229. Bribery—false answers concerning qualifications of elector—voting by disqualified person.
11-3248. Compensation of commissioners and mayor.

11-3202. (5401) **Submission of question to electors—petition, etc.**

Filing

Filing petition seeking to reorganize city government with city clerk is equivalent to filing with the city council; city must hold the election petitioned for within ninety days of initial filing with city clerk. State ex rel. Espelin v. City Council of City of Great Falls, — M —, 500 P 2d 1194.

11-3207. (5406) **Manner of conducting election—canvassing votes.** Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

The provisions of section 11-3215 are specifically to be followed in the special election except that the date of the primary election shall be at least thirty (30) days before the special election; provided further that the provisions of section 11-3218.1 shall be applicable to this section.

History: En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

11-3215. (5414) **Nomination of candidates—primary election.** (1) * * * [Same as parent volume.]

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars,

desiring to become a candidate for commissioner, shall, at least thirty-five (35) days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana,
County of .....

I, ..., being first duly sworn, say that I reside at ..... street, (city or town) of ....., county of ....., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19....., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed).....

Subscribed and sworn to (or affirmed) before me by ..... on this ..... day of ....., 19.....

(Signed).....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of ....., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19..... We further state that we know him to be a qualified elector of said (city, town), and a man of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors Number Street

(Space for Signatures.)

State of Montana,
County of .....

....., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed).....

Subscribed and sworn to before me this ..... day of ....., 19.....

..... (Notary Public),

This petition, if found insufficient, shall be returned to ..... at No. ..... street, ..., Montana.

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 16, Ch. 152, L. 1917; 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. re-en. Sec. 5414, R. C. M. 1921; amd. Sec. 1973.

Amendments

The 1973 amendment advanced the filing date specified in the preliminary paragraph of subdivision (2) from ten to thirty-five days before the primary; and made minor style changes in the statement and petition forms.

Effective Date

Section 2 of Ch. 2, Laws 1973 provided that the act should be in effect from and after its passage and approval. Approved January 11, 1973.

11-3216. (5415) **Ballots—form, contents, etc.**

Compiler's Notes

Sections 23-1220 to 23-1228, referred to in this section, were repealed by Sec. 248, Ch. 368, Laws 1969.

11-3229. (5428) **Bribery—false answers concerning qualifications of elector—voting by disqualified person.** Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person who agrees, by promise or written statement, that he will do, or will not do, any particular act or acts, for the purpose of influencing the vote of any elector or electors at any election provided in this act; any person making false answer to any of the provisions of this act relative to his qualifications to vote at such election; any person willfully voting or offering to vote at such election, who has not met the residency requirement of the state of Montana, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; any person knowingly procuring, aiding, or abetting any violation hereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or be imprisoned in the county jail not less than ten (10) nor more than ninety (90) days, or both such fine and imprisonment.

History: En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1971; amd. Sec. 4, Ch. 100, L. 1973.

Amendments

The 1971 amendment substituted "who has not met the residency requirement of the constitution of the state of Montana" for "who has not been a resident of this state for one year next preceding said election, or who is not twenty-one years of age"; and made minor changes in style.

The 1973 amendment deleted "of the constitution" in the language substituted by the 1971 amendment.

Effective Date

Section 3 of Ch. 166, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

11-3248. (5447) **Compensation of commissioners and mayor.** The salary of each commissioner may be as follows: The salary of each commissioner shall be as established by ordinance in all classes of cities. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971.

Amendments

The 1969 amendment divided the former first sentence into two sentences; substituted "each formal meeting of record" for "each meeting," "twenty-five dollars ($25)" for "twenty dollars ($20)" and made minor changes in the proviso; inserted "For" at the beginning of the second sentence and substituted "the annual salary * * * ($2,500)" for "not to exceed forty dollars ($40.00)."

The 1971 amendment substituted the first sentence after the colon for: "For each formal meeting of record attended, cities or towns with less than twenty-five thousand inhabitants, twenty-five dollars ($25); provided that no more than one (1) fee shall be paid for any one (1) day. For cities with more than twenty-five thousand inhabitants, the annual salary of each commissioner shall not exceed two thousand five hundred dollars ($2,500)."

11-3253. (5452) **Auditing books of accounts, records, etc.**

Compiler's Notes

Section 5-905, referred to in this section, was repealed by Sec. 6, Ch. 256, Laws 1971.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(i).

CHAPTER 33—COMMISSION-MANAGER FORM OF GOVERNMENT (continued)

Section
11-3326. Official oath.

11-3310. (5494) **Vacating or changing names of streets, etc.**

Standing

Plaintiffs whose property abutted a portion of the street affected had standing to bring action to invalidate ordinance vacating street for parking facilities, even though plaintiffs' property did not abut portion of street vacated. Kemmer v. City of Bozeman, — M —, 492 P 2d 211.

11-3326. (5510) **Official oath.** Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the constitutional oath of office, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R. C. M. 1921; amd. Sec. 2, Ch. 7, L. 1973.

Amendments

The 1973 amendment substituted "the constitutional oath of office" for "an oath or affirmation."

CHAPTER 34—CITY AND COUNTY CONSOLIDATED GOVERNMENT

11-3405. (5520.5) **Special election of commission, etc.**

Compiler's Notes

Section 23-105, referred to in this section, was repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section.
11-3702. Definitions.
11-3705. Estimate and appropriation of money required—report of transactions to be filed.
11-3709. Lease—bids.
11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation.
11-3711. Revenue bonds.
11-3712. Types of bonds—sources from which payable.
11-3717. Interest on bonds—redemption.
11-3718. Signatures on bonds.
11-3720. Sale of bonds—payment of interest—temporary bonds—tax exemption—legal investments—refunding bonds.
11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee.

11-3702. Definitions. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of section 11-3703.

(b) "The city" shall mean the particular city for which a particular commission may be created, or which may act as such a commission pursuant to resolution of its legislative body.

(c) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(d) to (g). * * * [Same as parent volume.]

(h) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this chapter.

(i) "Indenture" as used in this chapter means ordinance, resolution, or indenture which may be passed, adopted or entered into by a commission or by the legislative body of a city and "clause" includes article, section, subsection, paragraph, sentence or provision.

History: En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "created by a city" in subdivision (a) for "created by section 11-3704 of this act"; added "and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of section 11-3703" at the end of subdivision (a); substituted "or which may act as such a commission pursuant to resolution of its legislative body" at the end of subdivision (b) for "or the legislative body which may act as such a commission"; and made minor changes in phraseology and style.

11-3705. Estimate and appropriation of money required—report of transactions to be filed. (1) When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city may, subject to its fiscal law, at that time, and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission, and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

(2) The legislative body shall cause a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual or annual intervals as the legislative body may prescribe and shall cause to be published at least once annually in a newspaper of general circulation, published in the city, or if none is so published then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city, a summary statement of all its financial affairs, which shall be audited annually by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973.

Amendments

The 1973 amendment designated the two paragraphs as subsections (1) and (2); inserted "any city or" near the beginning of subsection (1); substituted "the powers of a parking commission" for "its powers" near the beginning of subsection (1); substituted "The legislative body shall cause a detailed report of all transactions of the parking commission . . . to be filed with it" for "Each such commission shall file with the legislative body a detailed report of all its transactions" at the beginning of subsection (2); substituted "cause to be published" for "pub-

lish" in the middle of subsection (2); inserted "summary" before "statement of all its financial affairs" near the end of subsection (2); and substituted "which shall be audited annually" for "audited" near the end of subsection (2); and made minor changes in phraseology.

11-3709. Lease—bids. The commission or city may lease any project acquired by it under the provisions of this chapter to the highest responsible bidder after notice, which shall consist of the publication of a notice inviting bids, by two or more insertions thereof, not less than five (5) days apart, in a newspaper of general circulation printed and published in such city, or city and county, which publication shall be commenced not less than fifteen (15) days prior to the date set in the notice for the opening of bids; or if there be no newspaper of general circulation printed or published therein, by posting copies of said notice inviting bids in at least three (3) public places in the city, or city and county, not less than fifteen (15) days prior to the date set in the notice for the opening of bids. Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased and the minimum rental to be paid under such lease; provided if the commission or city shall by resolution entered upon its minutes find and determine that the purposes of this chapter will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking project, subject to the ordinances, rules and regulations of the city pertaining to municipal parking projects.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "municipal parking project" for "municipal parking lot" twice near the end of the section; and made minor changes in style.

11-3710. Planning, zoning and building laws—co-operation of city officers and departments—payment in lieu of taxation. All parking facilities of a commission shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated. In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access for the purposes of the commission to the services and facilities of the city planning department, the city engineer, the police department, the fire department and such other departments and offices of the city as may be appropriate therefor. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city, which shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property, and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "by resolution" near the beginning of the last sentence for "in the resolution declaring need for a parking commission to function"; and added "and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs, or for compliance with any other provisions of indentures securing obligations of the commission" at the end of the section.

11-3711. Revenue bonds. The commission shall have power to issue revenue bonds in its name or in that of the city. No such bonds or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in section 11-3712.

History: En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973.

Amendments

The 1973 amendment added "or in that of the city" to the end of the first sentence; and substituted the second sentence for two sentences which provided that bonds should constitute obligations of the commission only and not of the city or state.

11-3712. Types of bonds—sources from which payable. A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all on-street parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments, and interest thereon, levied to finance the cost of parking facilities under any of the provisions of Title 11, chapter 22, which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section 11-3712 and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid; provided that the funds from which such transfers are made shall be reimbursed from the next collections of other revenues enumerated in this section 11-3712 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission, and nothing herein shall permit the levy of taxes at any time in excess of the deficiency then

existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law;

(h) from the proceeds of sale upon foreclosure of any mortgage of an off-street parking facility, made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section 11-3712, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

History: En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973.

Amendments

The 1973 amendment deleted "or with such proceeds together with financial assistance from the state or federal governments in aid of such projects" from the end of subdivision (a); substituted the present subdivision (c) for a subdivision reading "from its revenues generally"; inserted "on-street" before "parking meter revenues" in subdivision (e); substituted "pledged and appropriated by or under authority of the legislative body" in subdivision (e) for "appropriated by the governing body of the city"; inserted "for this purpose until the bonds are fully paid" at the end of subdivision (e); inserted new subdivisions (f), (g), (h); redesignated former subdivision (f) as (i); deleted two final sentences which authorized the pledge and allocation of parking meter revenues; and made minor changes in phraseology and style.

11-3717. Interest on bonds—redemption. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds the commission may fix limitations or restrictions on the payment of interest. Bonds may be callable upon such terms, conditions, and upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state of Montana in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at a rate of not to exceed six (6) per cent per annum" after "bear interest" in the first sentence.

11-3718. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951; amd. Sec. 7, Ch. 401, L. 1973.

Amendments

The 1973 amendment substituted "one signature of an officer of the city or

commission or representative of the trustee which shall be manually affixed" for "the countersignature of the clerk or other officer of the commission designated by the commission which countersignature shall be manually affixed" at the end of the first sentence; and deleted "or countersignatures" following "signatures" in the second sentence.

11-3720. Sale of bonds—payment of interest—temporary bonds—tax exemption—legal investments—refunding bonds. The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than ninety-five per cent (95%) of their par or face value. Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction or completion of which the bonds have been issued, and for a period of not to exceed two (2) years thereafter as provided for in the indenture. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates or receipts of any denomination whatsoever, and with or without coupons, to be exchanged for definitive bonds when ready for delivery, or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds. All such revenue bonds, and the interest or income therefrom, are exempt from all taxation in this state, other than gift, inheritance and estate taxes. All bonds issued under this chapter shall be legal investments for both public and private funds. The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. All provisions of this chapter applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale or exchange thereof.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973.

Amendments

The 1973 amendment inserted "public or private" before "sale or other disposition" in the first sentence; substituted "not less than ninety-five per cent (95%) of" for "less than" in the middle of the second sentence; deleted "but no bond may be sold at a price below the par or face value thereof which would result in a sale price yielding to the purchaser an average of more than six (6) per cent per annum, payable semiannually, according to standard table of bond values" from the end of the second sentence; deleted the former third sentence authorizing the commission to provide for security of the bonds; deleted the former fifth sentence authorizing a lien on any project arising from the proceeds; inserted "or be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds" at the end of the present third sentence; and made minor changes in style.

11-3723. Contracts—indenture—lease—incorporation by reference—rights of obligee. Every contract entered into by the commission for the use of any project or the services or facilities thereof, acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued. An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) (To Compel Performance of Contract.) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every

term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this chapter.

(b). * * * [Same as parent volume.]

History: En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973.

Amendments

The 1973 amendment deleted from the first paragraph a second sentence relating to the obligation to fix sufficient fees and charges; and made a minor change in style.

Effective Date

Section 10 of Ch. 401, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

Section

11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act.
11-3803. Definitions.
11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members.
11-3811. Vacancies.
11-3812. Citizen members of county planning board and city-county planning board—qualifications.
11-3815. Representation of additional cities, towns, or county on existing boards.
11-3825. Funds for operation—tax levy authority.
11-3830. Jurisdictional area.
11-3830.2. Jurisdictional area—county planning board.
11-3831. Master plan—contents.
11-3842. Plats of subdivisions—approval by planning board.
11-3842.1. Advice of planning board required.
11-3859. Citation of subdivision act.
11-3860. Statement of purpose.
11-3861. Definitions.
11-3862. Surveys required—exceptions—standards for monumentation.
11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing.
11-3864. Dedication of portions of subdivisions to the public—cash donations in lieu of dedication—waivers.
11-3865. Required abstract or title insurance for dedicated lands.
11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval.
11-3867. Filing of subdivision plat with county recorder—review of subdivision plats by land surveyor.
11-3868. Fees.
11-3869. Covenants run with the land.
11-3870. Vacation of plat—easements of utilities.
11-3871. Donations or grants to public considered a grant to donee.
11-3872. Certificate of survey—when required—contents—form.
11-3873. Index of plats to be kept by county clerk and recorder.
11-3874. Correction of survey—at governing body's expense.
11-3875. Administration of oaths by registered land surveyor.
11-3876. Violation—misdemeanor.

11-3801. City planning boards, county planning boards and city-county planning boards authorized—purpose of act. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county, or any combination thereof, may create a planning board in order to promote the orderly development of

its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

Before a county planning board may be created, the board of county commissioners shall, by resolution, give public notice of their intent to create such planning board and of a public hearing thereon, by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of hearing. A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than sixty (60) days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971.

Amendments

The 1971 amendment substituted that portion of the first sentence of the first paragraph preceding "may create" for "The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly"; and added the third paragraph.

11-3803. Definitions. As used in this act:

1 to 12. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973.

Amendments

The 1973 amendment made no change in this section.

11-3810. County planning boards and city-county planning boards—members—term of officer members and citizen members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members who reside outside the city limits to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. and c. * * * [Same as parent volume.]

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members shall reside outside the city limits but within the jurisdictional area of the planning board.

e. * * * [Same as parent volume.]

2. County planning boards shall consist of not less than five (5) members appointed by the board of county commissioners. At least one (1) member of any county planning board existing at or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in section 76-105 or a state co-operative grazing district, if officers of either reside in said county.

In the event that any city or town subsequently becomes represented on the county planning board pursuant to section 11-3815, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

3. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973.

Amendments

The 1971 amendment inserted subsection 2; and redesignated former subsection 2 as subsection 3.

The 1973 amendment inserted "who reside outside the city limits" in subdivision 1a; and added the second sentence to the first paragraph in subsection 2.

11-3811. Vacancies. Vacancies occurring on the board of official members, and by death or resignation of citizen members, shall be filled by the governing bodies having appointed them for the unexpired term.

Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor. Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners. In the event more than one (1) city is represented on a board the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "city-county planning" in the first sentence of the second paragraph; and inserted the second sentence of the second paragraph.

11-3812. Citizen members of county planning board and city-county planning board—Qualifications. The citizen members of the couny planning board shall be resident freeholders in the area over which the planning board has jurisdiction. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted the first sentence.

11-3815. Representation of additional cities, towns, or county on existing boards. Any city, county, or town, or any combination thereof wishing to be represented upon an existing planning board, may by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947, or Title 11, chapter 14, R.C.M. 1947, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in section 11-3825, R. C. M. 1947.

History: En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "as well as the jurisdictional area" and "and planning" in the second paragraph; added the third paragraph; and made a minor change in phraseology.

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance, a board of county commissioners has, by ordinance and resolution, or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. * * * [Same as parent volume.]

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed two (2) mills for planning board purposes, under procedures set forth in Title 11, chapter 14, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 16, chapter 19, R.C.M. 1947, provided such tax shall not exceed the maximum levy authorized in section 11-3825, paragraph 6, R.C.M. 1947.

5. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as

established pursuant to section 11-3830 or as modified pursuant to section 11-3830.2 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed two (2) mills for planning board purposes under procedures set forth in Title 16, chapter 19, R.C.M. 1947.

6. The tax levy for planning board purposes shall be limited as follows: a city of the first class, as defined in section 11-201 of this code, may levy a tax not to exceed two (2) mills; a city of the second class may levy a tax not to exceed four (4) mills; a city of the third class may levy a tax not to exceed six (6) mills and a town may levy a tax not to exceed six (6) mills.

A county of the first class, as defined in section 16-2419 of this code, may levy a tax not to exceed two (2) mills; a county of the second class may levy a tax not to exceed three (3) mills; a county of the third class may levy a tax not to exceed four (4) mills; a county of the fourth class may levy a tax not to exceed five (5) mills and counties of the fifth, sixth and seventh classes may levy a tax not to exceed six (6) mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "a board of county commissioners has, by ordinance and resolution" in subsection 1; increased the maximum levy from one to two mills and added the proviso in subsection 3; deleted "not to exceed one (1) mill" after "a tax" and added the proviso in subsection 4; added subsections 5 and 6; and made a minor change in phraseology.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

The boundaries of the jurisdictional area can be extended further than four and one-half miles from the limits of the cities only upon petition signed by five per cent (5%) or more of the resident freeholders living in excess of four and one-half miles and not more than twelve miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits, and upon presentation of said petition to the board of county commissioners. Thereafter, the board of county commissioners must, by resolution, set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition, by publication of notice of time and place of hearing on said petition and resolution, said notice to be published in a newspaper published in the county not less than ten (10) nor more than twenty (20) days prior to the date of said hearing. Thereafter, the said boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall

not be adopted by the board of county commissioners, if disapproved in writing, by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than twelve (12) miles beyond the limits of any city within the jurisdictional area.

2 and 3. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969.

Amendments

The 1969 amendment substituted "area involved" for "city" at the end of the first sentence; inserted the first three sentences of the second paragraph, and in the fourth sentence, formerly the second sentence of the first paragraph, substituted "twelve miles" for "four and one-half (4½) miles."

11-3830.2. Jurisdictional area — county planning board. (1) The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to section 11-3830. Should any city or town become represented on the county planning board pursuant to section 11-3815, the jurisdictional area of the county planning board shall be extended to include those cities or towns.

(2) The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

(3) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in this section and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(4) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies and a map showing the boundary lines so agreed upon shall be filed as provided in this section and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971.

Title of Act

An act providing for building restrictions and zoning and subdivision regulations by cities, towns and counties; providing for boards of adjustment and the duties thereof; providing for city, county and city-county planning boards; providing definitions; providing qualifications for members of boards; providing for a

master plan and a jurisdictional area; providing for plats of subdivisions; providing for planning and zoning districts; amending sections 11-2702, 11-3801, 11-3810, 11-3811, 11-3812, 11-3815, 11-3825, 11-3842, 11-3843, 11-3844, 11-3846, 11-3847, 11-3848, 11-3851, R. C. M. 1947, and adding new section 11-3830.2, and amending sections 16-4101, 16-4702, 16-4703, 16-4705, R. C. M. 1947.

11-3831. Master plan—contents. The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. to 4. * * * [Same as parent volume.]

5. Recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: En. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973.

Amendments

The 1973 amendment added subdivision 5.

11-3842. Plats of subdivisions—approval by planning board. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(3) Thereafter a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(4) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "or the board of county commissioners may by resolution" in the first sentence of subsection (1); inserted subsection (3); redesignated former subsection (3) as subsection (4); and made minor changes in style.

11-3842.1. Advice of planning board required. The governing body of any city, town or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to Title 11, chapter 38, R.C.M., 1947, shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971.

11-3843 to 11-3848. Repealed.

Repeal

Sections 11-3843 to 11-3848 (Secs. 43 to 48, Ch. 246, L. 1957; Secs. 17 to 22, Ch. 247, L. 1963; Secs. 10 to 14, Ch. 273, L. 1971), relating to approval, disapproval and recording of city plats, were repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

11-3851. Repealed.

Repeal

Section 11-3851 (Sec. 51, Ch. 246, L. 1957; Sec. 23, Ch. 247, L. 1963; Sec. 15, Ch. 273, L. 1971), relating to appeals from the rejection of subdivision plats, was repealed by Sec. 20, Ch. 500, Laws 1973. For new law see secs. 11-3859 to 11-3876.

11-3859. Citation of subdivision act. This act may be cited as the "Montana Subdivision and Platting Act."

History: En. Sec. 1, Ch. 500, L. 1973.

Title of Act

An act requiring local governing bodies to adopt subdivision regulations and in default thereof providing for the promulgation of departmental minimum requirements; providing for the submission of environmental assessments; providing for the administrative establishment of procedures and requirements for preparation of subdivision plats; setting forth requirements for surveying and platting divisions of real property and for recording surveys and plats; providing for surveying, platting, and subdividing generally; and repealing sections 11-601 through 11-616, 11-3843 through 11-3848 and 11-3851, R. C. M. 1947.

11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to encourage development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973.

11-3861. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Examining land surveyor" means a county surveyor or a registered land surveyor duly appointed to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or

office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, **and alleys, and other** divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body; and the same shall be accompanied by any proposed covenants to run with the platted land and other elements of the proposed subdivision required to furnish a basis of review by the governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

"Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated.

History: En. Sec. 3, Ch. 500, L. 1973.

11-3862. Surveys required—exceptions—standards for monumentation. (1) Except as provided herein, all division of real property made after June 30, 1973, into lots, tracts, or parcels any of which is ten (10) acres

or less in size or the boundaries or area of which cannot be determined without a survey or trigonometric calculation, must be surveyed by or under the supervision of a registered surveyor; and a certificate of survey thereof must be completed by the surveyor and filed by him in the office of the county clerk and recorder of the county in which the real property lies.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. Each subdivision plat must be accompanied by as complete a survey of the section or sections in which the subdivision is located as may be necessary to properly orient the subdivision within such section or sections. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(4) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is made for the purpose of a gift or sale to any member of the landowner's immediate family;

(f) which is leased or rented for farming and agricultural purposes.

(5) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(6) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500 L. 1973.

11-3863. Enforcement by governmental subdivisions—adoption of regulations—public hearing. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in each newspaper published in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning and economic development, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe model subdivision rules and reasonable minimum requirements designed to promote the public health, safety and general welfare to be contained in, and those subject areas which must be addressed by, subdivision regulations adopted pursuant to this act. The subdivision rules and minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The governing body shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning and economic development, shall require the submission by the subdivider to the governing body of an environmental assessment.

(4) The environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning and economic development.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels all of which front on an existing public road where no land in the subdivision will be dedicated to public use and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning and economic development, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

History: En. Sec. 5, Ch. 500, L. 1973.

11-3864. Dedication of portions of subdivisions to the public—cash donations in lieu of dedication—waivers. (1) A subdivision plat in which any lot is five (5) acres or less in size shall show that one-ninth (1/9) of the

platted area, exclusive of all other dedications, is forever dedicated to the public for parks and playgrounds.

A subdivision plat in which all lots shown are greater than five (5) acres in size shall show that one-twelfth (1/12) of the platted area, exclusive of all other dedications, is forever dedicated to the public for parks and playgrounds. There shall be no requirement for dedication of parks and playgrounds when the subdivision plat shows that all lots or parcels are greater than ten (10) acres in size. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks and playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by consent of the governing body that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

History: En. Sec. 6, Ch. 500, L. 1973.

11-3865. Required abstract or title insurance for dedicated lands. Where a subdivision platted under this act contains land to be dedicated to public use, the subdivider shall submit with the preliminary plat either:

(1) a certificate of a licensed title abstracter showing the names of the owners of record of the land to be dedicated and the names of lien holders or claimants of record against the land and the written consent

to the dedication by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land; or

(2) title insurance guaranteeing the public's interest in the dedicated land in a reasonable amount to be determined by the governing body.

History: En. Sec. 7, Ch. 500, L. 1973.

11-3866. Submission of subdivision plat to governing body—notice—hearing—approval—disapproval. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper published in the county not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) Upon approving or conditionally approving a preliminary plat, the governing body shall affix a dated and signed statement of approval to the preliminary plat. The governing body shall forward one (1) copy of the approval statement to the subdivider. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

History: En. Sec. 8, Ch. 500, L. 1973.

Compiler's Notes

Sections 11-3809, 11-3832, 11-3835 to 11-3839, 11-3841, 11-3843 to 11-3852, 11-3854, and 11-3856, contained in the reference to sections 11-3801 to 11-3856 in subsection (2), are repealed. Sections 11-3809, 11-3841, 11-3849 and 11-3850 were repealed by Sec. 8, Ch. 271, Laws 1959; section 11-3852 was repealed by Sec. 12, Ch. 246, Laws 1963; section 11-3854 was repealed by Sec. 12, Ch. 246, Laws 1963 and by Sec. 26, Ch. 247, Laws 1963; sections 11-3832, 11-3835 to 11-3839, and 11-3856 were repealed by Sec. 26, Ch. 247, Laws 1963; and sections 11-3843 to 11-3848, and 11-3851 were repealed by Sec. 20, Ch. 500, Laws 1973.

11-3867. Filing of subdivision plat with county recorder—review of subdivision plats by land surveyor. (1) All final subdivision plats shall be reviewed for errors and omissions in calculation or drafting by an examining land surveyor. He shall ascertain that all features, such as streets, drainage, and all other improvements and facilities to be operated or maintained with public funds, are essentially the same as those shown on the approved preliminary plat; that the permanent control monuments meet requirements prescribed pursuant to this act; that all exterior boundaries and corners of the tract are shown in sufficient detail so as to leave no doubt as to how they were established; and that all monuments and references marking exterior corners conform to standards of size and position promulgated pursuant to this act. When the survey data shown on the plat meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat in which he has a financial or personal interest other than as draftsman of the plat.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for record with the county clerk and recorder before any interest in the subdivided land can be sold, rented, leased, or transferred in any manner or offered for sale, lease, or transfer. If illegal transfers or offers of any manner are made, the county attorney shall commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property.

History: En. Sec. 9, Ch. 500, L. 1973.

11-3868. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973.

11-3869. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973.

11-3870. Vacation of plat—easements of utilities. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions; provided however, that when any pole line, pipeline, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats and other title records which were recorded prior to the effective date of this act in accordance with the law in force at the time of recording and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973.

11-3871. Donations or grants to public considered a grant to donee. Every donation or grant to the public, or to any person, society, or corporation, marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973.

11-3872. Certificate of survey—when required—contents—form. (1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this act.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this act.

History: En. Sec. 14, Ch. 500, L. 1973.

11-3873. Index of plats to be kept by county clerk and recorder. The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey. This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973.

11-3874. Correction of survey—at governing body's expense. When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973.

11-3875. Administration of oaths by registered land surveyor. Every registered land surveyor may administer and certify oaths:

(1) when it becomes necessary to take testimony for the identification of old corners or re-establishment of lost or obliterated corners;

(2) when a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(3) when the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

A record of oaths shall be preserved as part of the field notes of the survey, and noted on the certificate of survey filed under this section.

History: En. Sec. 17, Ch. 500, L. 1973.

11-3876. Violation—misdemeanor. Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one

hundred dollars ($100) or more than five hundred dollars ($500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer, or offer for sale, lease, or transfer of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973.

Separability Clause

Section 19 of Ch. 500, Laws 1973 read "If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Repealing Clause

Section 20 of Ch. 500, Laws 1973 read "Sections 11-601 through 11-616, 11-3843 through 11-3848, and 11-3851, R. C. M. 1947, are repealed."

CHAPTER 39—URBAN RENEWAL LAW

Section
11-3901. Definitions.
11-3906. Preparation and approval of urban renewal projects and urban renewal plans.
11-3907. Powers.
11-3909. Disposal of property in urban renewal area.
11-3910. Issuance of bonds.

11-3901. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning [is] clearly indicated by the context:

(a) to (p). * * * [Same as parent volume.]

(q) "Urban renewal plan" means a plan, as it exists from time to time for one or more urban renewal areas or for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate, on a yearly basis or otherwise, such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r). * * * [Same as parent volume.]

(s) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis. In the event of such election the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with section 11-3906 of this act. Such activity year shall relate to the budget year of the municipality.

History: En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "is" in the introductory paragraph.

Amendments

The 1969 amendment, in subdivision (q), inserted "for one or more urban renewal areas or" after "from time to time" and in item (2), "on a yearly basis or otherwise" after "sufficiently complete to indicate"; and added subdivision (s).

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) to (f). * * * [Same as parent volume.]

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election and shall be approved by a majority of those qualified electors voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this act. The yearly activities shall constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971.

Amendments

The 1969 amendment made a minor change in punctuation in subsection (a); deleted the former first sentence of subsection (g) which read: "Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question"; and added subsection (h).

The 1971 amendment substituted "qualified electors" for "taxpayers" in two places in the first sentence of subsection (g).

Effective Date

Section 19 of Ch. 158, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) to (i). * * * [Same as parent volume.]

(j) To plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this act for carrying out and planning urban renewal projects.

(k) To exercise all or any part or combination of powers herein granted.

(l) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969.

Amendments

The 1969 amendment inserted subdivision (j) and designated former subdivisions (j) and (k) as new subdivisions (k) and (l).

11-3909. Disposal of property in urban renewal area. (a). * * * [Same as parent volume.]

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality shall, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability

of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973.

Amendments

The 1973 amendment substituted "reasonable procedures" for "reasonable competitive bidding procedures" in the first sentence of subsection (b); substituted "shall" for "may" near the beginning of the second sentence of subsection (b); and substituted "proposals" for "bids" in four places in subsection (b).

11-3910. Issuance of bonds. (a) and (b) * * * [Same as parent volume.]

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) to (g) * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum" after "bear interest at such rate or rates" near the middle of subsection (c).

CHAPTER 40—OPEN DITCHES

Section
11-4001. Purpose of act.
11-4002. Open ditch declared nuisance.
11-4003. Powers of governing body.
11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969.

Amendments

The 1969 amendment deleted "if such ditches terminate within the limits of such city or town" at the end of the second sentence of the first paragraph.

11-4002. Open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961; amd. Sec. 2, Ch. 306, L. 1969.

Amendments

The 1969 amendment substituted "open ditch" for "unfenced, open ditch that terminates within the limits of such city or town."

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches within the corporate limits and to declare any such ditch a public nuisance, and

(2). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 63, L. 1961; amd. Sec. 3, Ch. 306, L. 1969.

Amendments

The 1969 amendment deleted "terminating" before "within the corporate limits" in subdivision (1).

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes. However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining, devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water, shall not be included in any special improvement district under this act for the purpose of assessment to support the special improvement districts for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961; amd. Sec. 4, Ch. 306, L. 1969.

Amendments

The 1969 amendment added the second through the fourth sentences.

CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

Section
11-4101. Definition of terms.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) * * * [Same as parent volume.]

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection there-

with, whether or not now in existence, which shall be suitable for use for commercial, manufacturing or industrial enterprises, recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities;

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 51, L. 1965; amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch. 386, L. 1971.

Amendments

The 1969 amendment added "recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities" at the end of subdivision (2).

The 1971 amendment inserted "commercial" in subdivision (2).

Effective Date

Section 2 of Ch. 50, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Special Purpose Law

This act is designed for special purpose and prevails over and is not limited by general legislation that county not make lease longer than ten years (16-1030), that county not sell land except at public auction (16-1009), or that county not contract for construction except on public bidding (16-1803). Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

11-4102. General municipal and county powers.

Constitutionality

Provision for issuance of revenue bonds under this act does not violate Montana constitution article XIII, section 1, since it is done for a public purpose, despite the fact that certain individual associations or corporations may benefit from the legislation. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

Judicial Review

Where project was entirely within county, court would not consider hypothetical conflict between section 16-101 and provision in this section allowing project partially without county. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

11-4103. Limited obligation bonds—form and contents, etc.

Constitutionality

This section does not violate Montana constitution article XIII, section 5, since it provides for revenue bonds and does not create debt or liability within the meaning of article XIII, section 5. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

11-4107. Use of proceeds of bond sales.

Equipment Acquired

Pollution controls or other equipment useful in industrial project created under this act may be acquired under provisions of this section from the proceeds of bond sales. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

11-4108. Taxation of projects.

Constitutionality

This section does not violate provisions of Montana constitution article XII, section 2 against taxing property of county or municipality, since county or municipality has only trust as opposed to beneficial interest, and taxation is based on use of property. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

CHAPTER 44—INTERLOCAL CO-OPERATION COMMISSION—IMPROVEMENT OF ESSENTIAL LOCAL GOVERNMENTAL SERVICES

Section
11-4401. Declaration of policy and purpose.
11-4402. Definitions.
11-4403. Establishment of an interlocal co-operation commission.
11-4404. Selection of an interlocal co-operation commission.
11-4405. Time of appointment.

11-4406. Meetings of commission.
11-4407. Vacancies—compensation—open meetings—quorum—rules.
11-4408. Considerations in preparation of proposals.
11-4409. Comprehensive program.
11-4410. Recommendations to implement program.
11-4411. Consideration of property and debts.
11-4412. Public hearings on proposed program.
11-4413. Procedure for making recommendations.
11-4414. Additional powers and duties.
11-4415. Appropriations.
11-4416. Term of commission.

11-4401. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of the state of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand, and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

(2) It is the purpose of this act to provide a method whereby the residents of local areas in Montana may propose local solutions to these common problems in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969.

Title of Act

An act providing for the creation of interlocal co-operation commissions to consider and propose means of improving essential local governmental services in Montana.

11-4402. Definitions. As used in this act:

(1) "Commission" means an interlocal co-operation commission established pursuant to section 3 [11-4403] of this act.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city or town.

History: En. Sec. 2, Ch. 129, L. 1969.

11-4403. Establishment of an interlocal co-operation commission. An interlocal co-operation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal co-operation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county and an interlocal co-operation commission shall be deemed to be authorized.

(2) A petition requesting the establishment of an interlocal co-operation commission shall be signed by at least ten (10) per cent of the qualified voters within the county registered for the last preceding general election and shall be filed with the clerk and recorder of the county.

Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within thirty (30) days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing body of all cities and towns having any jurisdiction in the county together with his certificate as to the sufficiency thereof and an interlocal co-operation commission shall be deemed to be authorized.

Only one (1) commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969.

11-4404. Selection of an interlocal co-operation commission. (1) Any interlocal co-operation commission established pursuant to this act shall consist of members to be selected as follows:

(a) Four (4) members selected by the county commissioners.

(b) Four (4) members appointed by the mayor of the principal city and confirmed by the governing body of the city.

(c) One (1) member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town.

(d) One (1) member, who shall be chairman of the interlocal co-operation commission, selected by the other members of the commission at their initial meeting.

(2) Each member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(3) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969.

11-4405. Time of appointment. The members of the interlocal co-operation commission shall be appointed within sixty (60) days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969.

11-4406. Meetings of commission. (1) Not later than eighty (80) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one (1) of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969.

11-4407. Vacancies—compensation — open meetings — quorum — rules. (1) In case of a vacancy for any cause, a new member shall be appointed

in the same manner as the member he replaces.

(2) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(3) All meetings of the commission shall be open to the public.

(4) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(5) Each member shall have one (1) vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by section 13 [11-4413] of this act, but other actions may be by a majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969.

11-4408. Considerations in preparation of proposals. A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics and predominantly rural areas. In the formation of its proposals which can include arrangements for county-wide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(1) The existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use, wherever possible, of comprehensive land-use plans prepared for the area by organized planning boards or other reliable surveys;

(2) The need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(3) Population density, distribution and growth, per capita assessed valuation, the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(4) The boundaries of existing units of local government;

(5) Maintenance of citizen access to, control of, and participation in local government;

(6) Such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969.

11-4409. Comprehensive program. The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both county-wide and urban areas bases, as it deems desirable.

History: En. Sec. 9, Ch. 129, L. 1969.

11-4410. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) Performance of one or more services by any existing unit of local government;

(2) Consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies or by contractual agreements;

(3) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) Creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) Annexation of unincorporated territory to any existing city or town;

(6) Consolidation of any existing cities and towns with any other existing cities and town;

(7) Consolidation of any cities and towns with the county in which they lie;

(8) Creation of a permanent council of governments, consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) Creation of a unified government for the entire county vested with (a) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana, and (b) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana.

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of the state of Montana.

History: En. Sec. 10, Ch. 129, L. 1969.

11-4411. Consideration of property and debts. (1) The commission shall determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and county-wide services and shall determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969.

11-4412. Public hearings on proposed program. Within three (3) years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and county-wide services and shall provide for adequate publication and explanation of its program. Notice of hearings shall be published once each week for at least two (2) weeks preceding a hearing, in at least

one (1) newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971.

Amendments

The 1971 amendment extended the time for the preparation of proposals from two years to three years after organization.

11-4413. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district, a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of the state of Montana, the commission shall make such recommendation or recommendations to the ensuing legislative assembly.

History: En. Sec. 13, Ch. 129, L. 1969.

11-4414. Additional powers and duties. A commission shall have the following additional powers and duties:

(1) To contract and co-operate with other agencies, public or private as it considers necessary for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of the commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its functions which may be available to or procurable by such agencies or units of government.

(2) To consult and retain such experts, and to employ such executive, clerical and other staff, as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the federal government. All moneys received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

History: En. Sec. 14, Ch. 129, L. 1969.

11-4415. Appropriations. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969.

11-4416. Term of commission. All commissions shall terminate five (5) years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote of three-fourths (¾) of the members favorable to such earlier termination.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971.

Amendments

The 1971 amendment extended the time specified in the first sentence from four years to five years after establishment.

Separability Clause

Section 17 of Ch. 129, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 18 of Ch. 129, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

Desk

REVISED CODES OF MONTANA

VOLUME 2

Part 1

1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 2 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2 (PART 1) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



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NEW LAWS IN VOLUME 2 (Part 1)

For index see pocket supplement to Replacement Volume 9

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12-345. Adoption of Replacement Volume One, Part 2, and Replacement Volume Two, Parts 1 and 2. The Second Replacement of Part 2 of Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 8, L. 1969.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the Second Replacement of Part 2 of Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-346. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1969.

Effective Date

Section 3 of Ch. 8, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

12-347. Adoption of Replacement Volume Four, Part 1, and Replacement Volume Eight. The Second Replacement of Part 1 of Volume Number 4 and Replacement Volume Number 8 of the R.C.M. 1947, as published by the publishers and distributors of said R.C.M. 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the R.C.M. 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the R.C.M. 1947, as included in the original compilation of the R.C.M. 1947.

History: En. Sec. 1, Ch. 207, L. 1971.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the second replacement of Part 1 of Volume Number 4 and Replacement Volume Number 6 of the R.C.M. 1947, as published by the publishers and distributors of said codes; and providing an effective date.

12-348. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 207, L. 1971.

Effective Date

Section 3 of Ch. 207, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

12-349. Adoption of Second Replacement Volume 4, Part 2. The Second Replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, is hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 143, L. 1973.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the second replacement of Part 2 of Volume Number 4 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes; and providing an effective date.

12-350. Omissions—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity or enforcement of any act, enactment, or title thereof, statute, or code section omitted from or erroneously or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 143, L. 1973.

Effective Date

Section 3 of Ch. 143, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

CHAPTER 4—COMMISSION ON UNIFORM STATE LAWS

Section
12-404. Duties of commissioners.

12-401. Appointment of commission on uniform state laws.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the "Model Act to Provide for the Appointment of Commissioners": Kentucky.

12-404. Duties of commissioners. Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws, and both in and out of such national conference shall do all in his power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report as provided in section 2 [82-4002] of this act. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for a former provision requiring a report on the commission's transactions and its advice and recommendations to be made to the legislature at each regular session.

TITLE 13—CONTRACTS

CHAPTER 2—PARTIES TO CONTRACT

13-204. (7472) When contract for benefit of third person, etc.

Employment Contract

Employee was not third-party beneficiary, within the meaning of statute, of contract between his employer and United States providing that employer should at all times be fully responsible for and exercise reasonable precaution for health and safety of his employees engaged in performance of work under contract; hence employee was not entitled to maintain action for employer's breach of safety clauses in the absence of express promise in contract to pay damages in addition to employee's rights to workmen's compensation. Hensley v. United States, 279 F Supp 548.

CHAPTER 3—CONSENT

13-308. (7480) Actual fraud, acts constituting.

Material Misrepresentations

Broker's statement that laundromat grossed $3,000 a month, was worth $37,000, and "looks like a real good deal" did not establish material misrepresentations constituting fraud and entitling purchaser to rescind sale contract, in view of evidence that, although open less than thirty days a month, business did gross $100 a day and that seller had paid $30,000 for business and added $4,000 of improvements; in the absence of corroboration, buyer's claim that broker also told him business netted $1,000 a month was not basis for rescission. Young v. Handrow, 151 M 310, 443 P 2d 9.

Inaccurate statement by defendant's agent in mineral deed negotiations that nearest oil fields were 20 miles away did not constitute fraud under this section in the absence of fraudulent intent and where the misstatement arose from an honest misunderstanding between defendant and agent. Clough v. Jackson, 156 M 272, 479 P 2d 266.

One Party in Superior Position

Record disclosing that buyer of real estate who was real estate broker and mineral dealer, knowledgeable in legal affairs, titles and values of property and who handled drafting of contract, was in superior position as compared to seller who was almost illiterate, weak-minded and an irresponsible drinker, and who took no part in drafting contract, was sufficient to raise legal question of fraud on grounds of gross inadequacy of consideration and undue influence. Rock v. Birdwell, 149 M 449, 429 P 2d 634.

Promise Must Be Made Without the Intent To Perform

Allegation that executive vice-president of bank promised to find purchaser for defendant's corporation did not support claim of fraud under this section since mere making of promise which promisor fails to keep is not actionable fraud. Gallatin Trust & Savings Bank v. Henke, 154 M 170, 461 P 2d 448.

13-309. (7481) Constructive fraud.

Concealment of Facts

Restaurant owner's withholding from potential buyers of information that she had received warning from state board of health concerning unsatisfactory condition of water supply and sewage disposal systems and that correction of difficulty was necessary to meet board's standards was fraudulent, the concealment being in the nature of a constructive fraud. Russell v. Russell, 152 M 461, 452 P 2d 77.

Deed from Mother to Son

Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence to show that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud as defined in statute. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

Deficiency in Amount of Land Sold

Sale of land later shown to consist of fewer acres than represented constituted constructive fraud entitling buyer to rescission or damages under statute even though buyer, experienced in real estate

transactions, failed to ascertain the true number of acres, and even though the seller's representations were honest mistake, not intended to deceive anyone. Hardin v. Hill, 149 M 68, 423 P 2d 309.

Failure To Read Deed Carefully

Where plaintiff's principal reason for wishing to rescind mineral deed was her mistaken belief that she had granted a royalty interest, evidence that plaintiff was astute in negotiations and that consideration for the deed was fair and adequate, but that plaintiff failed to read carefully the instrument she signed did not establish constructive fraud under this section. Clough v. Jackson, 156 M 272, 479 P 2d 266.

13-311. (7483) Undue influence—in what it consists.

What Constitutes Undue Influence

Where plaintiff's principal reason for wishing to rescind mineral deed was her mistaken belief that she had granted a royalty interest, evidence that plaintiff was astute in negotiations and that consideration for the deed was fair and adequate, but that plaintiff failed to read carefully the instrument she signed did not establish undue influence under this section. Clough v. Jackson, 156 M 272, 479 P 2d 266.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

13-603. (7516) Implied contract defined.

Service Contract

Evidence that it was understood plaintiff should be paid for her services and that plaintiff maintained a detailed record of services and expenses, even though including contrary indications, was sufficient under this section to support plaintiff's claim under an implied contract. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

13-606. (7519) What contracts must be in writing.

Estoppel

Promisor was estopped from raising statute of frauds as defense to action by promisee under oral agreement to divide equally income received from soil bank payments for eight-year period in view of evidence showing glaring inconsistencies in promisor's position. Daley v. Daley, 150 M 432, 436 P 2d 88.

Extension of Contract Period

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part performance. Fox v. Fifth West, Inc., 153 M 95, 454 P 2d 612.

Full Performance by One Party

Oral contract extending for more than one year was taken out of the operation of this section by full performance by one party. Davis v. Davis, — M —, 497 P 2d 315.

Sale of Stock

In action for breach of contract trial court improperly refused to direct verdict for defendant seller since oral contract for sale of stock in ranch corporation was invalid under this section and equitable estoppel was not applicable since there was no language amounting to representation or concealment of material facts by seller. Mueller v. Svejkovsky, 153 M 416, 458 P 2d 265.

Subsequent Oral Modification

Even if corporate minutes and subsequent listing agreement constituted written agreement to pay director commission on sale of corporation's real and personal property, alleged oral modification to permit sale to different buyer at lesser price was barred by this section; contract was not removed from bar of statute as an executed oral agreement under section 13-907. Hart v. Billings Public Stockyards, 157 M 345, 486 P 2d 120.

13-607. (7520) Effect of written contracts.

Parol Evidence Not Allowed

Trial court's finding based upon oral testimony admitted at trial was error since such oral testimony varied terms of writ-

ten contract and was thus inadmissible under this section. Davison v. Casebolt, 154 M 125, 461 P 2d 2.

In cattle-raising venture oral agreement between partnership and defendant that subsequent written contract would be modified when experience showed that each would profit by the change did not alter the terms of the written agreement under the rule of construction of this section. Heckman and Shell v. Wilson, — M —, 487 P 2d 1141.

CHAPTER 7—INTERPRETATION OF CONTRACTS

13-702. (7527) Contracts—how to be interpreted.

Intention of Parties

Restrictive covenant giving lessee exclusive right to operate drugstore did not extend to property beyond the plot described in the lease and summary judgment for lessor was properly granted because the intent of the parties at the time they entered into the agreement was reduced to writing and expressed in clear and explicit language that the exclusive covenant applied to "the entire premises covered by the plans and specifications." Matteucci's Super Save, Drug v. Hustad Corp., — M —, 491 P 2d 705.

13-704. (7529) Intention to be ascertained from language.

Insurance Contract

Inability of insurer to write malpractice insurance in state and fact that insured carried malpractice insurance with another company could not be considered in determining intentions of parties to comprehensive liability insurance policy, since policy was unambiguous. Home Ins. Co. v. Pinski Bros., 156 M 246, 479 P 2d 274.

Verbal Clarity

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation precluded insured from recovering benefits under policy where he had returned to work and was able to perform part of his duties since, under this section, language of contract governs its interpretation if language is clear and explicit and, as matter of law, insured did not come within policy coverage. Nelson v. Combined Ins. Co. of America, 155 M 105, 467 P 2d 707.

Restrictive covenant giving lessee exclusive right to operate drugstore did not extend to property beyond the plot described in the lease and summary judgment for lessor was properly granted because the intent of the parties at the time they entered into the agreement was reduced to writing and expressed in clear and explicit language that the exclusive covenant applied to "the entire premises covered by the plans and specifications." Matteucci's Super Save, Drug v. Hustad Corp., — M —, 491 P 2d 705.

13-705. (7530) Interpretation of written contracts.

Parol Evidence Admissible

Provisions in real estate sale contract that time was of the essence and that payments could be made on or before January 15 of each year created ambiguity sufficient that when vendee accelerated payment and made full payment to escrow agent, vendor's action for breach of contract could not be dismissed without hearing parol evidence to determine intention of the parties. Kielmann v. Mogan, 156 M 230, 478 P 2d 275.

13-706. (7531) Writing—when disregarded.

Writing Controls

Where parties called their relationship to a piece of equipment that of lessor and lessee, and lessee was obligated to pay all charges for both the delivery and return of the equipment upon termination or expiration of the lease, pay all maintenance, carry insurance, pay all taxes, and title remained in the lessor, and the instrument defining their relationship was entitled a lease, there was such overwhelming evidence that the arrangement was a lease, and not a contract of sale, that it was error for the trial court to find the latter. American Mach. Co. v. Johnson, 157 M 226, 483 P 2d 921.

13-707. (7532) Effect to be given to every part of contract.

Insurance Contract

Printed indemnity clause on back of purchase order was inoperative where typed portion of purchase order merely

accepted offer of seller with specific reference to attached modifications and made no mention of indemnity clause. Hoerner Waldorf Corp. v. Bumstead-Woolford Co., — M —, 494 P 2d 293.

13-708. (7533) Several contracts—when taken together.

Contract and Bond

Subcontractor's agreement with contractor and bond covering subcontractor were construed together in suit by contractor on subcontractor's bond. Carl Weissman & Sons, Inc. v. St. Paul Fire & Marine Ins. Co., 152 M 291, 448 P. 2d 740.

13-710. (7535) Words to be understood in usual sense.

"Trailer"

"Trailer" as used in restrictive covenant against their use was construed to refer to a type of structure and not the mobility of that structure. Timmerman v. Gabriel, 155 M 294, 470 P 2d 528.

13-713. (7538) Contracts explained by circumstances.

Contract of Sale

Substantial credible extrinsic evidence warranted resolution of ambiguity concerning grazing permits in real estate sales contract in favor of buyers who were repeatedly assured during final negotiations that permits would be transferred to them as part of deal. Dooling v. Casey, 152 M 267, 448 P 2d 749.

13-717. (7542) Contract—partly written and partly printed, etc.

Insurance Policy

Stamped phrase "Double Indemnity" appearing on face of insurance policy must be interpreted in light of rider to policy to which phrase refers. Niewoehner v. Western Life Ins. Co., 149 M 57, 422 P 2d 644.

Printed indemnity clause on back of purchase order was inoperative where typed portion of purchase order merely accepted offer of seller with specific reference to attached modifications and made no mention of indemnity clause. Hoerner Waldorf Corp. v. Bumstead-Woolford Co., — M —, 494 P 2d 293.

13-719. (7544) Inconsistent words rejected.

Contradictory Provisions

In suit by contractor for additional expenses incurred in obtaining suitable gravel to perform road construction contract, contradiction whereby state highway commission on one hand warranted condition of gravel pit but on other hand disclaimed any liability from reliance on such representations, would be resolved in favor of contractor for reason that contractor was in "take it or leave it" situation and justifiably relied upon commission's warranty. Haggart Constr. Co. v. State Highway Commission, 149 M 422, 427 P 2d 686.

13-720. (7545) Words to be taken most strongly against whom.

Option in Lease

Agricultural tenant was not entitled to exercise option to buy contained in lease of land after expiration of lease, even though holding over, in light of statute providing that uncertainties in contract be interpreted against plaintiff-promisor, causing uncertainty to exist. Miller v. Meredith, 149 M 125, 423 P 2d 595.

CHAPTER 8—UNLAWFUL CONTRACTS

13-804. (7556) Contracts fixing damages void.

Exceptions

Limitation of telephone company's liability for errors in contract for "yellow pages" advertising and providing for maximum recovery, was valid and not void under this section. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, — M —, 503 P 2d 526.

Without a demonstration of bad faith, fraud, or willful or wanton conduct by telephone company, a limitation of liability for errors and omissions in its advertising expressed in a written and signed

contract is reasonable and it was within the power of the company and subscribers to include such a clause in a valid and binding contract. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, — M —, 503 P 2d 526.

13-806. (7558) Restraints upon legal proceedings.

Arbitration Provision

On application for writ of supervisory control, district court would be required to take jurisdiction of claim by contractor for additional work performed on contract with drainage district, notwithstanding decision for drainage district under arbitration clause, since arbitration cannot be final as to questions of law. State ex rel. Cave Constr. Co. v. District Court, 150 M 18, 430 P 2d 624.

CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

13-903. (7565) When party may rescind.

Failure of Consideration

Under this section, party may rescind contract when consideration for his obligation fails in whole or in part through fault of party as to whom he rescinds, or if such consideration, before it is rendered to him, fails in material respect from any cause. Brown v. First Federal Savings & Loan Assn. of Great Falls, 154 M 79, 460 P 2d 97.

13-905. (7567) Rescission—how effected.

Oral Statements

Where the purchasers made a new offer based on the belief that the vendor's mineral interest would soon be reduced because of a third-party claim asserted after the execution of the original contract, statement by purchaser that "the deal was off" was insufficient to rescind or modify the written contract. Kretzschmar v. Bickerstaff, — M —, 489 P 2d 1285.

Waiver of Right to Rescind

In action by motorist, injured by negligence of insured, to recover under insured's policy, insurer impliedly waived right to rescind policy by accepting premium payments from insured and by paying other claims arising out of the same accident, after insurer had discovered insured's fraudulent misrepresentations in application for policy. McLane v. Farmers Ins. Exchange, 150 M 116, 432 P 2d 98.

13-907. (7569) Written contracts—how modified.

Contingent Fee Contract

A contingent fee contract providing that in event suit was instituted attorney would be entitled to 40 per cent of any sums recovered is binding in absence of written contract or executed oral contract varying the original contract. Gross v. Holzworth, 151 M 179, 440 P 2d 765.

Partial Execution

Alleged oral agreement to pay director commission for procuring purchaser for corporation's realty and personalty was not an "executed oral agreement" within this section since there was no performance by corporation and director's performance was consistent with performance of his duties as an officer-director and not necessarily pursuant to contract. Hart v. Billings Public Stockyards, 157 M 345, 486 P 2d 120.

TITLE 14—CO-OPERATIVES

Chapter
1. Credit unions, 14-143, 14-145, 14-148 to 14-150.
2. Co-operative associations, 14-203, 14-216.
4. Co-operative Marketing Act, 14-417.1.
5. Rural Electric and Telephone Co-operative Act, 14-502, 14-521, 14-530.

CHAPTER 1—CREDIT UNIONS

Section
14-143. Directors
14-145. Supervisory committee.
14-148. Loans to members.
14-149. Reserves.
14-150. Dividends—when declared—how paid.

14-132. Reports, examinations and fees.

Cross-References
State examiner's functions transferred to department of business regulation, sec. 82A-403 (1).

14-143. Directors. The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, and authorize the payment of the premium or premiums therefor from the funds of the credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by an individual; subject to the limitations of this act, determine the interest rates on loans and the maximum amount which may be loaned with or without security to any member; subject to such regulations as may be issued by the supervisor, authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three (3) directors to act for it in the purchase and sale of securities, the borrowing of funds, and the making of loans to other credit unions. Such executive committee or a membership officer appointed by the board from among the members of the credit union, other than the treasurer, and assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such com-

mittee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.

History: En. Sec. 14, Ch. 236, L. 1963; amd. Sec. 1, Ch. 213, L. 1971.

Amendments

The 1971 amendment substituted "the last day of any dividend period" and "dividend period" for "December 31" and "that year" in the third sentence, in the clause relating to interest refunds to members; inserted a new fourth sentence providing for an executive committee; inserted "Such executive committee or" at the beginning of the fifth sentence; inserted "committee or" before "membership officer" in the latter portion of the fifth sentence; and made minor changes in phraseology.

14-145. Supervisory committee. The supervisory committee shall make or cause to be made, at least semiannually, an examination of the affairs of the credit union, shall make or cause to be made a report of its semiannual examination to the board of directors; shall make or cause to be made an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union; may suspend by a unanimous vote any officer of the credit union, or any member of the credit committee, or of the board of directors, until the next members' meeting, which members' meeting shall be held not less than seven (7) nor more than fourteen (14) days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the shareholders to consider any violation of this act, the certificate of incorporation or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven (7) nor more than fourteen (14) days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two (2) years. As used in this section, the term "passbook" shall include any book, statement of account, or other record setting forth the members' transactions with the credit union.

History: En. Sec. 16, Ch. 236, L. 1963; amd. Sec. 2, Ch. 213, L. 1971.

Amendments

The 1971 amendment changed the examination provided for by the first clause of the first sentence from quarterly to semiannual; and inserted "a majority vote of" in the second sentence.

14-148. Loans to members. A credit union may loan to members for provident or productive purposes and made subject to the conditions contained in the bylaws. A borrower may repay his loan in whole or in part, during regular business hours on any day the credit union office is open for business and no penalty or minimum charge may be imposed for payments received in advance of schedule or for any loan paid in full prior to the maturity date. Loans to its own directors and to members of its

own supervisory or credit committee shall be reported to the directors as hereinafter provided, and such a loan may be made only if:

(1) the loan complies with all lawful requirements under this act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(2) Upon the making of the loan, the aggregate amount of loans outstanding to the borrower will not exceed the total amount of shareholdings in the credit union, not otherwise encumbered or pledged, which are pledged as security for loans to the borrower, or five thousand dollars ($5,000), whichever is greater;

(3) upon the making of the loan, the aggregate amount of loans outstanding under authority of this paragraph will not exceed twenty per centum (20%) of the unimpaired capital and surplus of the credit union;

(4) the loan is approved by the credit committee after the submission to them by the borrower of a detailed current financial statement on a form prepared by the credit committee, and reported to the board of directors within thirty (30) days of approval, and

(5) the borrower takes no part in the consideration of his application and does not attend any committee meeting while his application is under consideration.

No director or member of the supervisory or credit committee shall endorse for borrowers.

History: En. Sec. 19, Ch. 236, L. 1963; amd. Sec. 3, Ch. 213, L. 1971.

Amendments

The 1971 amendment substituted the third sentence and the numbered subdivisions for a sentence reading "Loans to a director or member of the supervisory or credit committee shall not exceed the amount of his holdings in the credit union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the credit union of any member or members pledged as security for the obligation of such director or committee member"; and made minor changes in phraseology and punctuation.

14-149. Reserves. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this act, sums in accordance with the following schedule:

(a) ten per centum (10%) of gross income until the regular reserve shall equal seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, then

(b) five per centum (5%) of gross income until the regular reserve shall equal ten per centum (10%) of the total of outstanding loans and risk assets. Whenever the regular reserve falls below ten per centum (10%), or seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as may be needed to maintain the reserve goals of seven and one-half per centum (7½%), or ten per centum (10%).

(2) In addition to such regular reserve, special reserves to protect the interests of members shall be established:

(a) when required by regulation; or

(b) when found by the supervisor, in any special case, to be necessary for that purpose.

History: En. Sec. 20, Ch. 236, L. 1963; amd. Sec. 4, Ch. 213, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

14-150. Dividends—when declared—how paid. After allocations to the required reserves, a credit union may declare a dividend from undivided earnings at the discretion of its board of directors and as its bylaws may provide. Dividends shall be paid on all fully paid shares outstanding at the close of the dividend period, but shares which become fully paid during the dividend period shall be entitled to a proportional part of the dividends calculated from the first day of the month following such payment in full. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten (10) days of that month. No dividends shall be paid on shares which are withdrawn during the dividend period.

History: En. Sec. 21, Ch. 236, L. 1963; amd. Sec. 5, Ch. 213, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 2—CO-OPERATIVE ASSOCIATIONS

Section
14-203. First, regular and special meetings.
14-216. Merger or consolidation of co-operative associations.

14-203. (6377) **First, regular and special meetings.** (1) First meeting. As soon as ten (10) or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing same in the post office, properly addressed, to each subscriber, at least ten (10) days before the time fixed, stating the object, time, and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders, and hold their office for such period of time as shall be provided in the bylaws.

(2) Regular and special meetings. (a) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(b) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within six (6) months after the close of the fiscal year at the call of the president or board.

(c) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth (1/5) of the votes entitled to be cast at such meeting.

(d) Written notice, stating the place, day and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called,

shall be given not less than seven (7) nor more than thirty (30) days before the meeting at the direction of the person calling the meeting.

(e) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders, or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(f) A quorum at a regular or special meeting shall be as provided in the associations articles or bylaws. If the articles or bylaws do not define a quorum, ten per cent (10%) of the first one hundred (100) stockholders plus five per cent (5%) of any additional stockholders, present in person, shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en Sec. 6377, R. C. M. 1921; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973.

Amendments

The 1973 amendment designated the previous language as subsection (1) and added subsection (2).

14-216. (6390) **Merger or consolidation of co-operative associations.** It shall be lawful for two (2) or more co-operative associations formed, or which may be hereafter formed under the laws of the state of Montana, to merge or consolidate with each other, or with one or more associations incorporated under the laws of another state or states relating to organization of co-operative associations, by complying with the provisions of chapter 2 of Title 14, R.C.M. 1947, or with the applicable laws of the state where the surviving or new association has its principal place of business.

(1) Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least ten per cent (10%) of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation, and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation the plan shall also contain a copy of the proposed articles for the new association to be formed.

(2) Notice. Notice of the proposed plan, and in the case of consolidation, of the proposed new articles, shall be mailed to each stockholder of the associations to be affected thereby.

(3) Meeting of association. The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than thirty (30) or more than sixty (60) days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds (⅔) of those voting vote in its favor.

(4) Effective date of merger or consolidation. Within thirty (30) days after the merger or consolidation plan has been adopted, documents of

merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president, and by the secretary or assistant secretary of each association merging or consolidating, and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana, and with the Montana secretary of state. If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state; if its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

(5) Sale or disposition of assets. At any meeting the stockholders of a co-operative association may authorize the disposition or sale of all or substantially all of the association's assets, if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon, and if disposition or sale is approved by two-thirds (⅔) of those entitled to vote thereon voting at the meeting.

(6) Rights and duties of new or surviving association. After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

The surviving or new association possesses all the rights and all the property of each of the individual associations, and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(7) Statute of limitations. No action may be maintained to invalidate any sale, merger or consolidation taken pursuant to this chapter because of the manner of its adoption, unless the action is commenced within two (2) years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R. C. M. 1921; amd. Sec. 2, Ch. 342, L. 1973.

Amendments

The 1973 amendment completely rewrote this section; for prior law, see parent volume.

Repealing Clause

Section 3 of Ch. 342, Laws 1973 read "Sections 14-217, 14-218 and 14-220, R. C. M. 1947, are repealed."

Effective Date

Section 4 of Ch. 342, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

14-217, 14-218. (6391, 6392) Repealed.

Repeal

Sections 14-217, 14-218 (Secs. 2, 3, Ch. 140, L. 1917), relating to terms, certificates and effects of consolidation, were repealed by Sec. 3, Ch. 342, Laws 1973.

14-220. (6394) **Repealed.**

Repeal

Section 14-220 (Sec. 1, Ch. 161, L. 1917), relating to use of terms in corporate or firm names, was repealed by Sec. 3, Ch. 342, Laws 1973.

CHAPTER 4—CO-OPERATIVE MARKETING ACT

Section
14-417.1. Associations exempt from antimonopoly provisions.

14-417.1. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this act shall not be deemed to be a conspiracy, a combination in restraint of trade or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily under the provisions of section 51-401.

History: En. 14-417.1 by Sec. 1, Ch. 467, L. 1973.

Compiler's Notes

Section 51-401, referred to in this section, was originally numbered 94-1104 and the text may be found in bound Volume Eight under sec. 94-1104.

Title of Act

An act excluding agricultural associations formed under the Co-operative Marketing Act from the provisions of section 94-1104, R. C. M. 1947.

CHAPTER 5—RURAL ELECTRIC AND TELEPHONE CO-OPERATIVE ACT

Section
14-502. Purpose.
14-521. Disposition of property.
14-530. Definitions.

14-502. Purpose. Co-operative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this act.

(b) * * * [Same as parent volume.]

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "co-operatives."

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971.

Amendments

The 1971 amendment substituted "as provided in this act" at the end of subdivision (a) for "in which electrical current and service are not otherwise available, from existing facilities and plants."

Electric Service

Where electrical service was available from utility and utility was ready, willing and able to serve new customer, electrical co-operative had no right under this section to serve customer, notwithstanding that co-operative had available power line 3,400 feet from site while utility's closest line was 6 miles from site, since availability of service from existing facilities and plants cannot be determined solely on basis of distance between existing transmission lines and site where electrical energy is to be delivered. Montana Power Co. v. Sun River Electric Cooperative, Inc., 157 M 468, 487 P 2d 307.

DECISIONS UNDER FORMER LAW

Electric Service

In determining that electrical service was available from existing facilities of private company thereby denying co-operative right to supply electric service to potential customer, court relied upon evidence that private company was serving other customers in area and evidence that

distance private company would have to extend its service to supply new customer was less than distance co-operative would have to extend its service to supply same customer. Montana Power Co. v. Fergus Elec. Co-op, 149 M 258, 425 P 2d 329.

14-521. Disposition of property. A co-operative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds (⅔) of all the members of the co-operative, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, or any other provisions of law, the board of trustees of a co-operative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbrancing of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the co-operative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the co-operative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States; provided, further, that the board may upon the authorization of a majority of those members of the co-operative voting at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another co-operative or foreign corporation doing business in this state pursuant to the act under which the co-operative is incorporated.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971.

Amendments

The 1971 amendment added "or to any other financing sources within the United States" at the end of the first proviso; added the second proviso; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 17, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 9, 1971.

14-528. Exemption from excise taxes—license fee.

Cross-References

Secretary of state's functions transferred to department of revenue, sec. 82A-1802.

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto, and every incorporated municipality in which ninety-five per cent (95%) or more of the premises are served by an electric co-operative on the effective date of the Territorial Integrity Act of 1971; "rural area" as applied to all

corporations organized under the provisions of paragraph (b) of section 14-502, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971.

Amendments

The 1971 amendment, in subdivision (a), inserted "and every incorporated municipality in which ninety-five per cent * * * Territorial Integrity Act of 1971," and made a minor change in punctuation.

Repealing Clause

Section 11 of Ch. 7, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 12 of Ch. 7, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 13 of Ch. 7, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 1, 1971.

TITLE 15—CORPORATIONS

Chapter
20. Securities Act of Montana, 15-2014.
22. Montana Business Corporation Act, 15-2202, 15-2226, 15-2236, 15-2272, 15-2285, 15-2290, 15-2295, 15-22-104, 15-22-109, 15-22-110, 15-22-112, 15-22-119, 15-22-121, 15-22-122.
23. Montana Nonprofit Corporation Act, 15-2304.1, 15-2354, 15-2359, 15-2383, 15-2384.
26. Montana Development Credit Corporation Act, 15-2601 to 15-2618.

CHAPTER 20—SECURITIES ACT OF MONTANA

Section
15-2014. Exempt transactions.

15-2014. Exempt transactions. Except as hereinafter in this section expressly provided, sections 15-2006 through 15-2012 shall not apply to any of the following transactions:

(1) to (7). * * * [Same as parent volume.]

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended.

(9) to (13). * * * [Same as parent volume.]

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

History: En. Sec. 14, Ch. 251, L. 1961; amd. Sec. 1, Ch. 185, L. 1973.

Amendments

The 1973 amendment added the proviso to the end of subsection (8).

CHAPTER 22—MONTANA BUSINESS CORPORATION ACT

Section
15-2202. Definitions.
15-2226. Meetings of shareholders.
15-2236. Vacancies—removal of directors.
15-2272. Sale of assets other than in regular course of business.
15-2285. Articles of dissolution—tax clearance certificate.
15-2290. Jurisdiction of court to liquidate assets and business of corporation.
15-2295. Decree of involuntary dissolution.
15-22-104. Filing of application for certificate of authority.
15-22-109. Amendment to articles of incorporation of foreign corporation.
15-22-110. Merger of foreign corporation authorized to transact business in this state.
15-22-112. Withdrawal of foreign corporation.
15-22-119. Filing of annual report of domestic and foreign corporations.
15-22-121. Fees for filing documents and issuing certificates.
15-22-122. Miscellaneous charges.

15-2202. Definitions. As used in this act, unless the context otherwise requires, the term:

(a) to (o). * * * [Same as parent volume.]

(p) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

History: En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969.

Amendments

The 1969 amendment added subdivision (p).

15-2204. General powers.

Eminent Domain Power

Legislature, under this section, has empowered utility companies to acquire property by eminent domain. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

15-2210. Renewal of registered name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars ($10). A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

Compiler's Notes

This section is reprinted to add a dollar sign ($) omitted in the parent volume.

15-2211. Registered office and registered agent.

Venue

This section does not grant to a foreign corporation residency in a particular county of this state for venue purposes by reason of the residency of its statutory agent for the service of process therein. Foley v. General Motors Corp., — M —, 499 P 2d 774.

15-2226. Meetings of shareholders. Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the

designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-half (½) of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969.

Amendments

The 1969 amendment substituted "one-half (½)" for "one-fourth (¼)" in the third paragraph.

15-2236. Vacancies—removal of directors. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds (2/3) of the shares then entitled to vote at an election of directors, unless otherwise provided by the articles of incorporation or bylaws; if the corporation has fewer than one hundred (100) shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969.

Amendments

The 1969 amendment substituted "two-thirds (2/3)" for "a majority" before "of the shares" and added "unless otherwise provided * * * entitled to vote" to the second sentence of the second paragraph.

15-2272. Sale of assets other than in regular course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) to (d). * * * [Same as parent volume.]

(e) The shareholders of a corporation may, by a vote of the holders of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than thirty (30) days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange or otherwise dispose of all, or substantially all, of the property and assets, with or without the good will, of a corporation, upon such conditions, and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors.

History: En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969.

Amendments

The 1969 amendment added subdivision (e).

15-2285. Articles of dissolution—tax clearance certificate. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) to (e). * * * [Same as parent volume.]

No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the state department of revenue and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state department of revenue is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973.

Amendments

The 1969 amendment deleted the subdivision designation "(f)" from the last paragraph and inserted "except a decree * * * by the attorney general" after "is terminated" in the first sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the final paragraph.

15-2290. Jurisdiction of court to liquidate assets and business of corporation. The district courts shall have full power to liquidate the assets and business of a corporation:

(a) (1) to (4). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under clause (a), (b), (c), or (e) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969.

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

The effective date of chapter 300, Laws of 1967, referred to in subdivision (e), was December 31, 1968.

Amendments

The 1969 amendment inserted subdivision (e) and the reference to it in the following paragraph.

15-2295. Decree of involuntary dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2290, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969.

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

The compiler has inserted the bracketed word "are."

Amendments

The 1969 amendment added "or, in the event * * * stockholders of such corporation."

Effective Date

Section 4 of Ch. 174, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

15-2299. Admission of foreign corporation.

Foreign Corporation No Longer Admitted

Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were to service present policyholders, from using a list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. Empire Life Ins. Co. of America v. Sorenson, 347 F Supp 987.

15-22-100. Powers of foreign corporation.

Venue

This act does not grant a foreign corporation residency in a particular county of this state for venue purposes. Foley v. General Motors Corp., — M —, 499 P 2d 774.

15-22-104. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly certified by manual or facsimile signature by the proper officer of the state or country of incorporation.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) to (3). * * * [Same as parent volume.]

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated" in the first sentence.

15-22-106. Registered office and registered agent of foreign corporation.

Venue

This section does not grant to a foreign corporation residency for venue purposes in any particular county of this state by reason of the residency of its statutory agent for the service of process therein. Foley v. General Motors Corp., — M —, 499 P 2d 774.

15-22-109. Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated."

15-22-110. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within sixty (60) days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969.

Amendments

The 1969 amendment substituted "certified" for "authenticated."

15-22-112. Withdrawal of foreign corporation. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) to (e). * * * [Same as parent volume.]

(f) That all taxes imposed on the corporation by Title 84 of the Revised Codes of Montana have been paid, supported by a certificate by the state department of revenue, to be attached to said application, to the effect that the state department of revenue is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of such a certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

History: En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in subdivision (f).

15-22-117. Transacting business without certificate of authority.

Foreign Corporation No Longer Admitted

Insurance company no longer authorized to transact business in Montana was able to maintain suit in equity enjoining its conservation agent, whose duties were to service present policyholders, from using list of policyholders to solicit business for another insurance company who subsequently employed him as sales manager. Empire Life Ins. Co. of America v. Sorenson, 347 F Supp 987.

DECISIONS UNDER FORMER LAW

License Tax Delinquency

Neither foreign corporation which created and assigned accounts receivable before complying with laws of state nor foreign corporation to which accounts receivable were assigned had right of enforcement until assignor paid license taxes under former statute providing that no contract of a foreign corporation is enforceable during the period of delinquency in payment of its fees and licenses, and although a subsequent compliance with statute would remove bar of nonenforceability, removal would not relate back to date of original delinquency and would not bar superior rights of others that accrued during period of delinquency. Manufacturers Acceptance Corp. v. Krsul, 151 M 28, 438 P 2d 667.

15-22-119. Filing of annual report of domestic and foreign corporations. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this act and returned to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971.

Amendments

The 1971 amendment substituted "fifteenth day of April" for "first day of March" wherever it appears in the section.

15-22-121. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) and (b). * * * [Same as parent volume.]

(c) Filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars ($20).

(d) to (l). * * * [Same as parent volume.]

(m) Filing articles of dissolution and issuing a certificate of dissolution, five dollars ($5).

(n) to (t). * * * [Same as parent volume.]

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969.

Amendments

The 1969 amendment inserted "and issuing a restated certificate of incorporation" in subdivision (c) and "and issuing a certificate of dissolution" in subdivision (m).

15-22-122. Miscellaneous charges. The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents ($.50) per page and two dollars ($2) for the certificate and affixing the seal thereto.

(b) * * * [Same as parent volume.]

History: En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971.

Amendments

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

15-22-126. Penalties imposed upon officers and directors.

DECISIONS UNDER FORMER LAW

Liability of Officers and Directors

Under former statute providing for liability of directors for failure to file required annual report, directors were liable to creditors only for debts contracted during period corporation was in default in filing annual report but if report when filed was false, officers and not directors were liable to creditors for damages resulting therefrom; false report was not same as no report, nor should court refrain from enforcing annual report requirements because statute did not require sufficient facts to apprise public of corporation's financial condition. Mountain States Supply v. Mountain States Feed & Livestock Co., 149 M 198, 425 P 2d 75.

15-22-128. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than three (3) months, nor more than six (6) months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

Compiler's Notes

This section is reprinted to correct an error in the parent volume.

15-22-141 to 15-22-144. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-2322 to 94-2325. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
15-22-141	94-2322
15-22-142	94-2323
15-22-143	94-2324
15-22-144	94-2325.

CHAPTER 23—MONTANA NONPROFIT CORPORATION ACT

Section

15-2304.1. Newborn infants to be covered by insurance issued by health service corporation.
15-2354. Jurisdiction of court to liquidate assets and affairs of corporation.
15-2359. Decree of involuntary dissolution.
15-2383. Fees for filing documents and issuing certificates.
15-2384. Miscellaneous charges.

15-2304.1. Newborn infants to be covered by insurance issued by health service corporation. No disability insurance plan or group disability in-

surance plan issued by a health service corporation, which in addition to covering the persons insured, also covers members of such a person's family, may be issued or amended in this state if it contains any disclaimer, waiver or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person.

History: En. Sec. 5, Ch. 74, L. 1973.

15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) (1) to (5). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969.

Amendments

The 1969 amendment inserted subdivision (e).

15-2359. Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2354, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "are."

Amendments

The 1969 amendment added ", or, in the event * * * of such corporation."

Effective Date

Section 3 of Ch. 62, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 21, 1969.

15-2383. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) to (g). * * * [Same as parent volume.]

(h) Filing articles of dissolution and issuing a certificate of dissolution, five dollars ($5).

(i) to (o). * * * [Same as parent volume.]

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969.

Amendments

The 1969 amendment inserted "and issuing a certificate of dissolution," in subdivision (h), and deleted former subdivisions (p) and (q), for text of which see parent volume.

Effective Date

Section 8 of Ch. 152, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

15-2384. Miscellaneous charges. The secretary of state shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, fifty cents ($.50) per page and two dollars ($2) for the certificate and affixing the seal thereto.

(b) * * * [Same as parent volume.]

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971.

Amendments

The 1971 amendment increased the per page charge specified in subdivision (a) from 35¢ to 50¢.

CHAPTER 26—MONTANA DEVELOPMENT CREDIT CORPORATION ACT

Section

15-2601. Purpose.
15-2602. Definitions.
15-2603. Incorporators—general powers—capital stock—articles of incorporation.
15-2604. Certificate of incorporation.
15-2605. Amendment of articles of incorporation.
15-2606. Board of directors.
15-2607. Powers of stockholders and members.
15-2608. First meeting of corporation.
15-2609. Stock ownership and limitations.
15-2610. Members, and limitation and apportionment of loans by members.
15-2611. Withdrawal of membership.
15-2612. Surplus.
15-2613. Deposit of funds.
15-2614. Control—supervision—reports.
15-2615. Duration.
15-2616. Termination.
15-2617. Credit of state not pledged.
15-2618. Application to sections of Revised Codes of Montana 1947.

15-2601. Purpose. The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state; similarly, to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 15 of the Revised Codes of Montana 1947, the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969.

Title of Act

An act to authorize the incorporation of development credit corporations for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state.

15-2602. Definitions. As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation": A Montana development credit corporation created under this act.

(2) "Financial institution": Any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors": The board of directors of the corporation created under this act.

(5) "Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

History: En. Sec. 2, Ch. 128, L. 1969.

15-2603. Incorporators—general powers—capital stock—articles of incorporation. Nine (9) or more persons, a majority of whom shall be residents of this state, who may desire to create a development credit corpo-

ration under the provisions of this act, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner: such persons shall by articles of incorporation filed in the manner prescribed in Title 15 of the Revised Codes of Montana 1947, under their hands and seals, set forth:

(1) The name of the corporation, which shall include the words "Development Credit Corporation of Montana."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purpose for which the corporation is founded, which shall include the following:

(a) To elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money from the members, nonmember persons, firms or corporations, and state and federal agencies, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(c) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(d) To participate with any duly authorized private lending agency, and city, state, and federal governmental lending agencies in the making of loans.

(e) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(f) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(g) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(h) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in paragraphs (e), (f), or (g), as security for the payment of any part of the purchase price thereof.

(i) To co-operate with and avail itself of the facilities of the state planning and economic development department and any similar governmental agencies; and to co-operate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(j) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency whether state, federal, or municipal.

(k) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

(4) The articles of incorporation shall set forth the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, and the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(5) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 15, Revised Codes of Montana 1947, so far as consistent with this act.

History: En. Sec. 3, Ch. 128, L. 1969.

15-2604. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns, shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this act. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this act, as set forth in section 3 [15-2603] thereof.

History: En. Sec. 4, Ch. 128, L. 1969.

15-2605. Amendment of articles of incorporation. The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds (2/3) of the votes to which the stockholders shall be entitled and two-thirds (2/3) of the votes to which the members shall be entitled; provided that no amendment which is inconsistent with the general purposes expressed herein, or which eliminates or curtails the obligation of the corporation to make reports as provided in section 14 [15-2614], shall be made without amendment of this act; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 11 [15-2611], or affects a member's voting rights as provided in section 7 [15-2607], shall be made without the consent of each member affected by such amendment. Within thirty (30) days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this act be submitted, as prescribed in Title 15, Revised Codes of Montana 1947, to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this act, shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969.

15-2606. Board of directors. The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than nine (9), as shall be determined in the first instance by the incorporators and thereafter annually by the members and the

stockholders of the corporation. The directors need not be stockholders or members in the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969.

15-2607. Powers of stockholders and members. The stockholders and the members of the corporation shall have the following powers of the corporation: (a) to determine the number of and elect directors as provided in section 6 [15-2606] hereof; (b) to make, amend, and repeal bylaws; (c) to amend the articles of incorporation as provided in section 5 [15-2605]; (d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one (1) vote, in person or by proxy for each share of capital stock held by him, and each member shall have one (1) vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars ($1,000.00) shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional one thousand dollars ($1,000.00) which such member is authorized to have outstanding on loans to the corporation at any one time as determined under paragraph three (3) (b) of section 10 [15-2610].

History: En. Sec. 7, Ch. 128, L. 1969.

15-2608. First meeting of corporation. The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place, and purpose of the meeting, a copy

of which notice shall be mailed, or delivered, to each incorporator at least five (5) days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five (5) of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969.

15-2609. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All domestic corporations organized for the purpose of carrying on business within this state including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) All financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent (10%) of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: En. Sec. 9, Ch. 128, L. 1969.

15-2610. Members, and limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this act. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed ten (10) times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership: Three per cent (3%) of the capital and surplus of commercial banks and trust companies; one per cent (1%) of the total outstanding loans made by a building and loan association; two per cent (2%) of the capital and unassigned surplus of stock insurance companies; and such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph three (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by member shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-half of one per cent (.50 of 1%) in excess of the rate of interest determined by the board of directors to be

the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History: En. Sec. 10, Ch. 128, L. 1969.

15-2611. Withdrawal of membership. Membership in the corporation shall be for the duration of the corporation; provided that—

(a) Upon written notice given to the corporation two (2) years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969.

15-2612. Surplus. Each year the corporation shall set apart as earned surplus not less than ten per cent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one hundred per cent (100%) of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969.

15-2613. Deposit of funds. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969.

15-2614. Control—supervision—reports. The corporation shall be subject to the examination of the state superintendent of banks, and shall make reports of its condition not less than annually to said superintendent, who in turn shall make copies of such reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, Revised Codes of Montana 1947.

History: En. Sec. 14, Ch. 128, L. 1969.

15-2615. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969.

15-2616. Termination. If a corporation organized pursuant to this act shall fail to begin business within five (5) years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969.

15-2617. Credit of state not pledged. Under no circumstances is the credit of the state pledged herein.

History: En. Sec. 17, Ch. 128, L. 1969.

15-2618. Application to sections of Revised Codes of Montana 1947. The provisions of Title 15 of the Revised Codes of Montana 1947, shall apply to the corporation in so far as they may be applicable and not inconsistent with this act.

History: En. Sec. 18, Ch. 128, L. 1969.

Separability Clause

Section 19 of Ch. 128, Laws 1969 read "The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions."

TITLE 16—COUNTIES

Chapter
3. Removal of county seats, 16-302, 16-305.
4. Location of county seats, 16-402, 16-412.
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CHAPTER 3—REMOVAL OF COUNTY SEATS

Section
16-302. Submission to electors.
16-305. Publication of result.

16-302. (4370) **Submission to electors.** If the petition is signed by at least fifty per cent (50%) of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county; provided, that for the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county, for the purpose of ascertaining whether such petition bears the

names of at least fifty per cent (50%) of the voters listed therein; and if such petition then shows that it has not been signed by at least fifty per cent (50%) of the voters of the county, after deducting from the said original petition the names of all persons who may have signed such original petition, and who may have filed, or caused to be filed, with the county clerk of said county or the board of county commissioners, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient, and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R. C. M. 1921; amd. Sec. 1, Ch. 406, L. 1973. Cal. Pol. C. Sec. 3977.

Amendments

The 1973 amendment changed the signature requirement from 65% of the taxpayers of the county to 50% of the qualified electors; deleted a definition of taxpayers; and deleted provision for comparing the names on the petition with those on the assessment roll.

16-305. (4373) **Publication of result.** When the returns have been received and compared, and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks.

History: En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R. C. M. 1921; amd. Sec. 2, Ch. 406, L. 1973. Cal. Pol. C. Sec. 3981.

Amendments

The 1973 amendment inserted "voting on the question" following "majority of the qualified electors."

CHAPTER 4—LOCATION OF COUNTY SEATS

Section
16-402. Designation of temporary county seat—special election.
16-412. Submission of question of locating permanent county seat to voters—elections.

16-402. (4379) **Designation of temporary county seat—special election.** (1) to (3). * * * [Same as parent volume.]

(4) Provided, however, that at any time within six months after the passage of an act creating a new county, a petition or petitions may be filed with the county clerk of the board of county commissioners of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner hereinafter in this act provided. Said petition or petitions must contain in the aggregate the names of at least one hundred qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein.

(5) The petition or petitions when filed with the board must also have certificates attached thereto from the county clerk of the county

in which the person or persons signing the petition resided before the creation of the new county, certifying that the names of the person signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R. C. M. 1921; amd. Sec. 3, Ch. 406, L. 1973.

Amendments

The 1973 amendment substituted "qualified electors" in the second sentence of subsection (4) for "taxpayers, whose names appear upon the assessment books containing the last assessment of the property situated in such new county, and"; and deleted "in the last assessment books of his county, and also" before "in the registration books" in subsection (5).

16-405. (4382) **Repealed.**

Repeal

Section 16-405 (Sec. 5, Ch. 135, L. 1911; Sec. 1, Ch. 119, L. 1971), relating to registration of electors, was repealed by Sec. 58, Ch. 100, Laws 1973. Section 4, Ch. 406, Laws of 1973 purported to amend this section. Such amendment was void under the provisions of section 43-515.

16-412. (4389) **Submission of question of locating permanent county seat to voters—elections.** Any county heretofore created, in which the permanent county seat has not been located by valid election held for the purpose of locating the permanent county seat of said county, may have a special election, for the purpose of voting on such question, called and held under the provisions of this act, or if no special election is held for such purpose, then said question shall be submitted by the county commissioners at the next general election after the passage of this act and in the manner provided herein for the submission of such questions at general elections; provided, however, that no special election shall be called for the purpose of submitting such question unless a petition or petitions containing in the aggregate the names of one hundred electors of such county, whose names appear on the last registration books of said county, are filed with the clerk of the board of county commissioners within six months after the passage and approval of this act.

Upon the filing of such petition or petitions within said time, containing the requisite number of electors, which must be ascertained by the board from the records of said county, said board must immediately call such special election as herein provided.

If registration districts and polling precincts have already been established in said county, they shall remain the same for such special election, but a new registration shall be had and said special election conducted and the result determined as in this act provided.

The provisions of this section shall not apply in any case where there has been a permanent county seat located and maintained for a period of three years from the date immediately subsequent to the date of the approval of this act, whether the same was located by a legal election or otherwise.

History: En. Sec. 12, Ch. 135, L. 1911; re-en. Sec. 4389, R. C. M. 1921; amd. Sec. 5, Ch. 406, L. 1973.

Amendments

The 1973 amendment deleted "taxpaying" before "electors" in the proviso to the first paragraph and again in the second paragraph; and deleted "upon the last assessment book, and also" after "whose names appear" in the proviso to the first paragraph.

CHAPTER 5—CREATION OF NEW COUNTIES BY PETITION AND ELECTION

Section
16-501. Creation of new counties—debts and assets prorated—minimum area and valuation.
16-504. Petition for creation of new county—attached affidavits—notice and hearing.
16-505. Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.
16-506. Measures to be taken after election—officers—effect of adverse vote.
16-514. School and road funds.

16-501. (4390) **Creation of new counties—debts and assets prorated—minimum area and valuation.** New counties may from time to time be formed and created in this state from portions of one or more counties, which shall have been created and in existence for a period of more than two years, in the manner set forth and provided in this act; provided, however, that no new county shall be established which shall reduce any county to an assessed valuation of less than twelve million dollars ($12,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment; nor shall any new county be established which shall reduce the area of any existing county from which territory is taken to form such new county, to less than twelve hundred square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties nor shall any new county be formed which contains an assessed valuation of property less than ten million dollars ($10,000,000.00), inclusive of all assessed valuation as shown by the last preceding assessment, of the county or counties from which such new county is to be established, nor shall any new county be formed which contains less than one thousand square miles of surveyed land exclusive of all forest reserve land or Indian reservations, not open for settlement, nor shall any line thereof pass within fifteen miles of the courthouse situate at the county seat of the county sought to be divided; provided, that such county line may be run within a distance of ten miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat, and in such cases a petition, signed by at least fifty per centum (50%), of the voters in the proposed new county, shall be presented to the judge of the district court in which the county affected is located, asking for the appointment of a commission of five (5) disinterested persons, who shall determine if the topographical conditions are such as to warrant the fixing of the county division lines closer than at fifteen miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in section 16-504 of this code.

Every county which shall be enlarged or created from the territory taken from any other county or counties shall be liable for a prorata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken, and shall be entitled to a prorata proportion of the assets of the county or counties from which such territory is taken, to be determined as provided by sections 16-502, 16-503 and 16-511.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R. C. M. 1921; amd. Sec. 1, Ch. 106, L. 1929; amd. Sec. 6, Ch. 406, L. 1973.

Amendments . . . nature requirement in the second proviso to the first paragraph from 58% to 50%. The 1973 amendment reduced the sig-

16-504. (4393) **Petition for creation of new county—attached affidavits —notice and hearing.** (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of such then existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties; and such board of county commissioners shall be empowered and have jurisdiction to do and perform all acts provided for to be done or performed in this act, for each of the several counties from which any proposed territory is to be taken, and shall direct that a certified copy of all orders and proceedings had before such board of county commissioners shall be certified by the county clerk to the board of county commissioners of each of the several counties from which any territory is taken by the proposed new county; and all officers of any such county shall comply with the orders of the board of county commissioners, in the same manner as if said order had been duly made by the board of county commissioners of each respective county from which territory is proposed to be taken. Such petition shall be signed by at least fifty per cent (50%) of the qualified electors of the proposed new county, whose names appear on the official registration books and who are shown thereon to have voted at the last general election preceding the presentation of said petition to the board of county commissioners as herein provided; provided, that in cases where the proposed new county is to be formed from portions of two or more counties, separate petition shall be presented from the territory taken from each county; and each of said separate petitions shall be signed by at least fifty per cent (50%) of the qualified electors of each of said proposed portions. Such signatures need not all be appended to one paper, but may be signed to several petitions which must be similar in form, and when so signed the several petitions may be fastened together and shall be treated and presented as one petition.

(2) Such petition or petitions shall contain:

1 to 6. * * * [Same as parent volume.]

There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that they have read said petition and examined the signatures affixed thereto, and they believe that the statements therein are true, and that it is signed by at least fifty per cent (50%) of the qualified electors as herein provided, of the proposed new county, or of the proposed portion thereof, taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties; that the signatures affixed thereto are genuine; and that each of such persons so signing was a qualified elector of such county therein sought to be divided, at the date of such signing. Such petition or petitions so veri-

fied, and the verification thereof, shall be accepted in all proceedings permitted or provided for in this act, as prima facie evidence of the truth of the matters and facts therein set forth. Upon the filing of such petition or petitions and affidavits with the clerk of the said board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the said petitions and of any opponents thereto, which date must be not later than thirty days after the filing of such petition with the clerk of said board. The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties, but not within the proposed new county, and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the said county clerk shall order and cause to be published, at least once a week for two weeks next preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of ..... county (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portion of the said ..... county and ..... county (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the said board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting so to be held), and when and where all persons interested may appear and oppose the granting of said petition, and make any objections thereto.

Dated at ..... at ..... Montana.

....., County Clerk.

Said petitioners shall, on or before the date fixed for said hearing, file with the said board of county commissioners a bond to be approved by said board, in an amount of five thousand dollars, payable to the county in which said petition is filed, conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in this act, not exceeding the amount specified in said bond, in the event that at the election herein provided for more than fifty per cent (50%) of the votes cast at said election are "for the new county of ..... (naming the proposed new county)," "No."

(3). * * * [Same as parent volume.]

(4) The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

1. * * * [Same as parent volume.]

2. Whether the said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county as herein required, or in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least fifty per cent (50%) of the

qualified electors of that portion of each of such existing counties which it is proposed to take into the proposed new county.

3 to 8. * * * [Same as parent volume.]

(5) On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors (as shown by the official registration books on the day of the filing of any such petition) of any territory lying within said proposed new county contiguous to the boundary line of the said proposed new county, and of the old county from which such territory is proposed to be taken, and lying entirely within a single old county and described in said petition, asking that said territory be not included within the proposed new county, must make such changes in the proposed boundaries as will exclude such territory from such new county, and shall establish and define such boundaries. On final hearing the board of commissioners, upon petition of not less than fifty per cent of the qualified electors of any territory lying outside said proposed new county, and contiguous to the boundary line of said proposed new county, and of the old county or counties from which such territory is proposed to be included, asking that said territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in such new county, and shall establish and define such boundaries; provided, however, that the segregation of such territory from any old county or counties shall not leave such county or counties with less than twelve million dollars of assessed valuation, based upon the last assessment roll; provided, that no change or changes so made shall result in reducing the valuation of the proposed new county to less than an assessed valuation of ten million dollars, inclusive of all assessed valuation; and provided, further, that no change shall be made which shall leave the territory so excluded separate and apart from and without the county of which it was formerly a part. Petitions for exclusion shall be disposed of in the order in point of time in which they are filed with the clerk of the board of county commissioners, and on final determination of boundaries no changes in the boundaries originally proposed shall be made except as prayed for in said petition or petitions, or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R. C. M. 1921; amd. Sec. 7, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced signature requirements for petitions from 58% to 50% in subsections (1), (2) and (4); increased from 42% to 50% the vote required to defeat the petition in the last paragraph of subsection (2); and deleted the requirement that petitioners be taxpayers from the first sentence of the paragraph preceding the Notice in subsection (2), and from the second sentence of subsection (5).

16-505. (4394) **Duty of commissioners when findings justify new county—division into township, road and school districts—change of boundaries of election precincts—election—temporary county seat.** (1) If the said board of county commissioners determine that the formation of said proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than twelve million dollars, inclusive of the assessed valuation, nor the area thereof to less than twelve hundred square miles of surveyed land, and that the proposed new county

contains property of an assessed valuation of at least ten million dollars, inclusive of all assessed valuation, and that the proposed new county has an area of at least one thousand square miles of land, and that no line of said proposed new county passes within fifteen miles of the courthouse situate at the county seat of any county proposed to be divided, except as hereinbefore provided, and that said petition contains the genuine signatures of at least fifty per cent (50%) of the qualified electors of the proposed new county, or in cases where separate petitions are presented from portions of two or more existing counties (as herein required), that each of said petitions contain the genuine signatures of at least fifty per cent (50%) of the qualified electors of that portion of the proposed new county from which it is taken, then the said board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts, and define their boundaries and designate the names of such districts.

(2). * * * [Same as parent volume.]

(3) Within two weeks after its determination of the truth of the allegations of said petition as aforesaid, the said board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day in the territory which is proposed to be taken for the new county, not less than ninety days nor more than one hundred and twenty days thereafter, for the purpose of determining whether such territory shall be established and organized into a new county; and for the election of officers and location of a county seat therefor, in case the vote at such election shall be in favor of the establishment and organization of such new county. All qualified electors residing within the proposed new county who are qualified electors of the county or counties from which territory is taken to form such proposed new county, and who are registered under the provisions of the registration laws of the state, shall be entitled to vote at said election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in the state of Montana.

(4) to (7). * * * [Same as parent volume.]

All returns of election herein provided for shall be made to the board of county commissioners calling such election.

All nominations of candidates for the office required to be filled at said election shall be made in the manner provided by law for the nomination of candidates by petition.

The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of said laws relating to primary elections in this state, shall have application to any election provided for in this act.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R. C. M. 1921; amd. Sec. 8, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced the signature requirement on petitions from 58% to 50% of the qualified electors in subsection (1); and deleted "and who have resided within the limits of the proposed county for a period of more than six months next preceding the day of the election" following "territory is taken to form such proposed new county" in the second sentence of subsection (3).

16-506. (4395) **Measures to be taken after election—officers—effect of adverse vote.** (1) If, upon the canvass of the votes cast at such election, it appears that more than fifty per cent (50%) of the votes cast are "For the new county of .....," "Yes," the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same shall belong, under the name of ..... county, and that the city or town receiving the highest number of votes cast at said election for county seat shall be the county seat of said county until removed in the manner provided by law, and designating and declaring the person receiving respectively the highest number of votes for the several offices to be filled at said election, to be duly elected to such offices. Said board shall forthwith cause a copy of its said resolution, duly certified, to be filed in the office of the secretary of state, and ninety days from and after the date of such filing said new county shall be deemed to be fully created, and the organization thereof shall be deemed completed, and such officers shall be entitled to enter immediately upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state. The clerk of the board of county commissioners with which said petition was filed, as herein provided, must immediately make out and deliver to each of said persons so declared and designated to be elected, a certificate of election authenticated by his signature and the seal of said county. The persons elected members of the board of county commissioners and the county clerk shall immediately, upon receiving their certificates of election, assume the duties of their respective offices.

(2) The board of county commissioners shall have authority to provide a suitable place for the county officers, and to purchase such supplies as may be deemed necessary for the proper conduct of the county government. All other officers take office ninety days after the filing of the resolution herein provided for with the secretary of state. All the officers elected at said election, or appointed under this act, shall hold their offices until the time provided by general law for the election and qualification of such officers in this state, and until their successors are elected and qualified, and for the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed respectively from and including the first Monday after the first day of January following the last preceding general election. If, however, upon such canvass it appears that more than fifty per cent (50%) of the votes cast at said election are "For the new county of .....," "No," the board of county commissioners canvassing said vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease; and no other proceedings in relation to any other division of said old county or counties shall be instituted for at least two years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R. C. M. 1921; amd. Sec. 9, Ch. 406, L. 1973.

Amendments

The 1973 amendment reduced the votes necessary to create a county from 58% to a simple majority at the beginning of

subsection (1); and accordingly increased, in the last sentence of subsection (2), the percentage of the vote necessary to defeat the petition from 42% to more than 50%.

16-514. (4401) **School and road funds.** The county superintendent of schools of the old county, or each of the old counties, respectively, shall furnish the county superintendent of schools of the new county with a certification of the ANB in the different school districts in the territory set apart to form the new county, and shall certify to the board of county commissioners the amount due; and said board shall order a warrant drawn on the treasurer of the new county for all the money that is or may be due by any apportionment or otherwise to the different school districts embraced in the new county from his county; and the county treasurer shall certify to the county commissioners the amount due in the different road funds, and the county commissioners shall order a warrant drawn on the treasurer of their county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county from their county, which said amounts shall be properly credited in both counties. And whenever, in the formation of a new county, a road or school district has been divided, the board of county commissioners shall, by resolution, direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "a certification of the ANB in the different school districts" for "a certified copy of the last school census of the different school districts" in the early part of the section.

CHAPTER 8—GENERAL POWERS AND LIMITATIONS UPON COUNTIES

Section
16-807. Limit of indebtedness.
16-808. Counties indebted beyond statutory limit may operate on cash basis.

16-807. (4447) **Limit of indebtedness.** No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding forty thousand dollars ($40,000) without the approval of a majority of the electors thereof voting at an election to be provided by law.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R. C. M. 1921; amd. Sec. 1, Ch. 486, L. 1973.

Amendments

The 1973 amendment inserted "assessed" before "value of the taxable property therein" in the middle of the first sentence; and increased the amount specified in the second sentence from $10,000 to $40,000.

16-808. (4447.1) **Counties indebted beyond statutory limit may operate on cash basis.** That in case the total indebtedness of a county, lawful when incurred, by reason of great diminution of assessed value exceeds the limit of five per centum (5%) it shall be lawful for said county and it is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of said county out of the cash in the county treasury and derived from its current revenue, and under such restrictions and regulations as may be imposed by the board of county commissioners of said county by a resolution duly adopted and spread upon the minutes of said board; provided, however, that nothing herein shall restrict the right of said board to make the necessary tax levies for interest and sinking fund purposes, and provided further that nothing herein shall affect the right of any creditor of said county to pursue any remedy now given him by law to obtain payment of his claim.

History: En. Sec. 1, Ch. 93, L. 1935; amd. Sec. 2, Ch. 33, L. 1973.

Amendments

The 1973 amendment substituted "assessed value" for "taxable value" near the beginning of the section; and deleted "provided in section 5 of article 13 of the Constitution of Montana," following "(5%)."

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS—COMPENSATION

Section
16-901. Board, how composed.
16-910. Regular meetings—extra sessions.
16-912. Compensation of members of board.
16-913. Employment of personnel by the board of county commissioners.

16-901. (4452) **Board, how composed.** Each county may have a board of county commissioners, consisting of three members, whose term of office is six years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1933; amd. Sec. 1, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4022.

Amendments

The 1973 amendment substituted "may" for "must" before "have a board of county commissioners."

16-910. (4462) **Regular meetings—extra sessions.** The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973. Cal. Pol. C. Sec. 4032.

Amendments

The 1973 amendment deleted "except when meeting as the county board of equalization as provided for by law" following "each and every month of the year" in the first sentence in order to implement article VIII, section 7 of the 1972 Constitution.

16-912. (4464) **Compensation of members of board.** (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive twelve cents ($.12) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars ($35) per day for each day's attendance on the sessions of the board and twelve cents ($.12) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars ($10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973.

Amendments

The 1969 amendment raised the annual salaries in subsection (1) from $6,500 to $8,000, $6,300 to $7,500, $6,100 to $7,300 and $6,000 to $7,100; in subsection (2), raised the per diem compensation from $25 to $30 and inserted a $4,000 per year maximum.

The 1973 amendment substituted the final clause of the first paragraph of subsection (1), beginning with "to be established" for the schedule formerly provided in that subsection; increased the mileage allowance from nine cents to 12 cents in the second paragraph of subsection (1) and in the middle of subsection (2); substituted "a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars ($35)" for "thirty dollars ($30)" near the beginning of subsection (2); deleted "but not to exceed four thousand dollars ($4,000) per year" following "sessions of the board" near the beginning of subsection (2); and deleted subsection (3), which prohibited salary increases during the term of a county commissioner.

16-913. Employment of personnel by the board of county commissioners. The board of county commissioners may employ such persons as it deems

necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary and responsibilities of such persons.

History: En. Sec. 1, Ch. 309, L. 1973.

Title of Act

An act permitting the board of county commissioners to hire administrative assistants and set their duties and salary; and amending section 16-2409, R. C. M. 1947.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary.
16-1008A. Erection and management of county buildings and other improvements.
16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.
16-1015. Taxation.

16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary. A county shall have power to trade with, or purchase from, any city, town or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 302, L. 1969.

Title of Act

An act to permit counties power to sell or trade property to any city, town or political subdivision; and to provide for the purchase thereof, by a county without appraisal.

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1008A. (4465.8) **Erection and management of county buildings and other improvements.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five (5) lay members to be appointed by the board of county commissioners, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hosiptal which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of

the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973. See history of section 16-1001.

Amendments

The 1973 amendment eliminated the senior district court judge of the county, the chairman of the school board for the district in which buildings are situated and the mayor of the city in the district from the commission provided for by the second paragraph; substituted the board of county commissioners in the second sentence of the second paragraph as the appointing authority for lay members in lieu of "the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district"; and made minor changes in phraseology.

16-1009. (4465.9) **Sale of property.**

Industrial Development Projects

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is therefore not limited by provision in this section that county not sell land except at public auction. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent. A county upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city, town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, to any city, town, or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of county commissioners involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 302, L. 1969.

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1013. (4465.10) **Examination and allowance of officers' accounts.**

Board for County Prisoners

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized account of county funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273.

16-1015. (4465.12) **Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are

prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding twenty-seven (27) mills, on each dollar of the taxable valuation for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and twenty-five (25) mills on each dollar of the taxable valuation for any one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes. Provided, however, that after July 1, 1974, the mill levy shall not exceed twenty-four (24) mills in any county of the fourth, fifth, sixth and seventh classes or twenty-two (22) mills in any county of the first, second and third classes until the sales-ratio studies conducted by the department of revenue demonstrate that the average assessed value of single family dwellings equals or exceeds thirty-six per cent (36%) of full cash value.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973. See history of section 16-1001.

Amendments

The 1969 amendment increased the maximum levy from 20 to 24 mills for counties of the fourth, fifth, sixth and seventh classes, and from 20 to 22 mills for counties of the first, second and third classes.

The 1973 amendment increased the maximum levies from 24 to 27 mills for the fourth, fifth, sixth and seventh classes, and from 22 to 25 mills for the first, second and third classes; and added the proviso to the end of the section.

16-1016. (4465.13) Repealed.

Repeal

Section 16-1016 (Subd. 14, Sec. 1, Ch. 100, L. 1931), granting the board of county commissioners power to equalize assessments, was repealed by Sec. 113, Ch. 391, Laws 1973.

16-1030. (4465.27) Lease of county property.

Special Purpose Leases

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is not limited by provision in this section that county not make lease longer than ten years. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

16-1031. (4465.28) Repealed.

Repeal

Section 16-1031 (Subd. 29, Sec. 1, Ch. 100, L. 1931; Sec. 1, Ch. 1708, L. 1947; Sec. 1, Ch. 202, L. 1961), relating to garbage and ash collection, was repealed by Sec. 6, Ch. 136, Laws 1971.

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section
16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance, operation, and equipping.
16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations.
16-1183. Law enforcement officials to enforce act.
16-1184. Penalty—misdemeanor.

16-1179. County-owned civic center, youth center, recreation center—tax levy for maintenance, operation, and equipping. The board of county

commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax not to exceed two (2) mills on each dollar of the taxable valuation for any one (1) year, for the purpose of maintaining, operating, and equipping such county-owned civic center, youth center, recreation center, or any combination of two or more thereof. All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds derived from such tax together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof shall constitute a separate fund, called the civic-youth-recreation center fund, shall be deposited with the county treasurer, and shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof. All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973.

Amendments

The 1973 amendment increased the maximum tax levy from one to two mills; and added "equipping" after "maintaining and operating" as a purpose for which the tax levy may be used.

16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations. The boards of county commissioners of the respective counties shall have power, by general order, from time to time, to establish a curfew hour, after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act.

History: En. Sec. 1, Ch. 29, L. 1969.

Compiler's Notes

Chapter 29, Laws 1969 provided: "It is the intent of the legislative assembly that this act be codified as one of the special powers enumerated in chapter 11 of Title [16] 15, Revised Codes of Montana, 1947."

The bracketed reference to Title 16 was substituted by the compiler for an erroneous reference to Title 15 .

Title of Act

An act providing for the establishment of a curfew hour for minors in unincorporated cities and towns by general order of the board of county commissioners of the respective counties of Montana, providing a penalty and for enforcement repealing all acts and parts of acts in conflict herewith.

16-1183. Law enforcement officials to enforce act. The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

History: En. Sec. 2, Ch. 29, L. 1969.

16-1184. Penalty—misdemeanor. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding ten dollars ($10.00).

History: En. Sec. 3, Ch. 29, L. 1969.

Repealing Clause

Section 4 of Ch. 29, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Board of county printing

CHAPTER 12—~~COUNTY PRINTING COMMISSION~~

Section
16-1230. County commissioners to contract for county printing—competitive bids—separation of printing and legal advertising.
16-1231. Contractor's bond—subletting.
16-1232. Competitive bids required.

16-1225. Act how cited.

Cross-References

Printing defined, sec. 19-103.1.

16-1227. Establishment of county printing commission.

Cross-References

Commission renamed and continued in department of intergovernmental relations, sec. 82A-904.

16-1228. Compensation.

Cross-References

Compensation and reimbursement of members, secs. 82A-110(5), 82A-904(3).

16-1230. County commissioners to contract for county printing—competitive bids—separation of printing and legal advertising. It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with one (1) newspaper, published at least once a week, and of general bona fide and paid circulation with second class mailing privileges, published within the county, and having been published continuously in such county at least twelve (12) months immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, and all other printed forms required for the use of such counties at not more than the prices set by the board of county printing.

Nothing in this act shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act, or to let contracts at prices less than the maximum fixed by the board of county printing.

In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall separate the printing contract into two (2) parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper; and the other contract shall provide for all printed forms, materials and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least one (1) year; provided, however, that in no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

History: En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973.

Amendments

The 1973 amendment substituted "board of county printing" for "county printing commission" at the end of the first paragraph; and added the second and third paragraphs.

16-1231. Contractor's bond—subletting. The contract shall be let to the printing establishment that in the judgment of the county commissioners shall be most suitable for performing said work, provided, that the county commissioners shall require of any contractor to do such county printing, a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two (2) sufficient sureties, conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this act and the terms of such contract; provided that nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; also provided, however, that this requirement shall not affect any contract made prior to the passage of this act. Such contract for printing shall extend for a period of not more than two (2) years. All printing establishments which may receive any contract for printing under this act and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available, and if not within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.

History: En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973.

Amendments

The 1973 amendments substituted "printing establishment" for "newspapers" near the beginning of the first and third sentences; and substituted "some printing establishment within the county if such is available, and if not within the state" in the third sentence for "some newspaper or printing establishment within the state."

16-1232. Competitive bids required. The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act.

History: En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973.

Amendments

The 1973 amendment substituted "The board of county commissioners shall call" at the beginning of the section for "Nothing in this act shall limit or restrict the power of a board of county commissioners to call"; and deleted "or to let contracts at prices less than the maximum fixed by the county printing commission" from the end of the section.

CHAPTER 14—COUNTY FAIRS

Section
16-1406. Appropriation and tax levy for county fairs.

16-1406. (4549) **Appropriation and tax levy for county fairs.** The board of county commissioners of their respective counties may appropriate annually out of the general fund of the county treasury to the county fair commission a sum not to exceed three thousand five hundred dollars ($3,500), to be expended by the county fair commission for the

purpose of holding a county fair and/or junior fair, for advertising the products and resources of their county. In addition to the appropriation above provided for, or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of one and one-half (1½) mills or less on each dollar of taxable property in such county, for the purpose of securing, equipping, maintaining and operating a county fair and/or a junior fair, including the purchase of land for such purposes, and the erection of such buildings and other appurtenances as may be necessary; provided, however, that no portion of said appropriation or tax levy shall be expended for horse racing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971.

Amendments

The 1971 amendment increased the maximum annual appropriations specified in the first sentence from $2,500 to $3,500.

CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section
16-1512. Dispositions of property prior to 1969 validated.
16-1513. Dispositions of property prior to 1971 validated.
16-1514. Dispositions of property prior to 1973 validated.

16-1512. Dispositions of property prior to 1969 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 78, L. 1969.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

16-1513. Dispositions of property prior to 1971 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 96, L. 1971.

Title of Act

An act to validate and confirm sales or

dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right title and interest of the county in and to the property described or covered.

16-1514. Dispositions of property prior to 1973 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 148, L. 1973.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section

16-1601. Rural improvement districts—creation and objects.
16-1602. Resolution of intention—publication, mailing and notice.
16-1620. Form and terms of district warrants and bonds—payment of contracts.

16-1601. (4574) **Rural improvement districts—creation and objects.** Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

The owner or owners of open ditches carrying irrigation or other water, shall not be included in any rural improvement districts under this act for the purpose of assessment to support the rural improvement districts for the installation, repair, or maintenance of any protective devices. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969.

Compiler's Notes

The 1969 amendment reconciled the two amendments of section 16-1601 by 1961

acts. Therefore, this section takes the place of both sections 16-1601(1) and 16-1601(2) as set forth in the parent volume.

Amendments

The 1969 amendment reconciled the two 1961 amendments and added the second paragraph.

16-1602. (4575) **Resolution of intention—publication, mailing and notice.** Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the proposed district, listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969.

Amendments

The 1969 amendment inserted "real" before "property" after "firm or corporation owning" and "listed in his name * * * school district taxes" after "proposed district" in the second sentence of the first paragraph.

Effective Date

Section 2 of Ch. 252, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 6, 1969.

16-1620. (4593) **Form and terms of district warrants and bonds—payment of contracts.** (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. ———
United States of America
State of Montana

Warrant or
(Bond No. ——) Dollars
$———

Interest at the rate of ——— percent per annum, payable annually.

Special Improvement District Coupon
Warrant or Bonds

————, Montana.
Issued by the County of ————, Montana.

The county treasurer of ———— County, Montana, will pay to ————, or bearer, the sum of ———— dollars, as authorized by Resolution No. ——, as passed on the ——— day of ———, 19——, creating or maintaining the Special Improvement District No. ——, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of ———— County, Montana.

This warrant (or bond) bears interest at the rate of —— per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of ———— each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of ————, Montana, relating to the issuance thereof.

Dated at ————, Montana, this ——— day of ———, 19——, County of ————, Montana.

(SEAL)

By ————, chairman of the board of county commissioners.

(SEAL)

———— County Clerk

Registered at the office of the county treasurer of ————, County, Montana this ——— day of ———, 19——.

———— County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the chairman of the board of county commissioners and the county clerk, provided however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars ($100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed thirty (30) years, except that if federal loans are available for improvements, repayment may extend over a period not to exceed forty (40) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) * * * [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not to ex-

ceed six per cent per annum" after "shall bear interest" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

16-1631. (4602) **Transfer of management and control of district, etc.**

Compiler's Notes

Chapter 123, laws of the fourteenth legislative assembly (1915), referred to in this section, was repealed by Ch. 147, Laws 1921.

CHAPTER 17—WEED CONTROL

Section
16-1709.1. Weed control and weed seed extermination districts—formation.
16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.
16-1719. County supervisors to control weeds and to exterminate weed seed on public highways and publicly owned lands in the district.

16-1709. Repealed.

Repeal

Section 16-1709 (Sec. 5, Ch. 195, L. 1939; Sec. 1, Ch. 59, L. 1951), relating to creation of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

16-1709.1. Weed control and weed seed extermination districts—formation. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969.

Title of Act

An act providing that a weed control district be formed in every county; amending section 16-1713, R. C. M. 1947, by eliminating the language referring to city and town district; and repealing sections 16-1709, 16-1710, 16-1711, 16-1712 and 16-1723, R. C. M. 1947.

16-1710 to 16-1712. Repealed.

Repeal

Sections 16-1710 to 16-1712 (Secs. 6 to 8, Ch. 195, L. 1939; Sec. 1, Ch. 228, L. 1947; Sec. 1, Ch. 60, L. 1951), relating to the creation of weed control and weed seed extermination districts, were repealed by Sec. 3, Ch. 185, Laws 1969.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, two (2) from municipalities within the county. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county and one (1) member shall be from a municipality within the county. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may

or may not be a member of the board. All such supervisors shall be entitled to mileage, and per diem of ten dollars ($10) per day. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969.

Amendment

The 1969 amendment revised this section to insert provisions for five-member boards.

Repealing Clause

Section 3 of Ch. 185, Laws 1969 read "Sections 16-1709, 16-1710, 16-1711, 16-1712, and 16-1723, R. C. M. 1947, are repealed."

16-1719. County supervisors to control weeds and to exterminate weed seed on public highways and publicly owned lands in the district. It shall be the duty of the supervisors to control noxious weeds on the highways and county-owned land and on public streets, alleys and municipally owned land within the confines of the district. The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973.

Amendments

The 1973 amendment inserted "and on public streets, alleys and municipally owned land" in the first sentence.

16-1723. Repealed.

Repeal

Section 16-1723 (Sec. 1, Ch. 206, L. 1953; Sec. 1, Ch. 47, L. 1965), relating to the dissolution of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section

16-1803. Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding four thousand dollars ($4,000).

16-1803.1. Division of contracts to circumvent bidding procedures prohibited.

16-1803. (4605.1) **Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding four thousand dollars ($4,000).** (1) No contract shall be entered into between a board of county commisioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of four thousand dollars ($4,000), or for the construction of any building, for which must be paid a sum in excess of four thousand dollars ($4,000) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the

date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973.

Amendments

The 1969 amendment increased the amount specified in subsection (1) from $2,000 to $4,000 for purchases and from $2,000 to $2,500 for building construction.

The 1973 amendment increased the amount specified in subsection (1) for building contracts from $2,500 to $4,000.

Special Purpose Construction

Industrial Development Projects Act (11-4101 to 11-4110) is designed for special purpose and is thereby not limited by provision in this section that county not contract for construction except on public bidding. Fickes v. Missoula County, 155 M 258, 470 P 2d 287.

16-1803.1. Division of contracts to circumvent bidding procedures prohibited. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device.

History: En. Sec. 1, Ch. 153, L. 1971.

Title of Act

An act to provide that a county shall not circumvent any competitive bidding procedures with respect to the letting of a contract for a public work or construction project under certain circumstances by dividing a public work or construction project into several contracts, separate work orders or similar devices.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section
16-1904. Hearings on budget—adoption—fixing tax levies.

16-1901. (4613.1) **County budget, etc.**

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(j).

16-1904. (4613.4) **Hearings on budget — adoption — fixing tax levies.** (1). * * * [Same as parent volume.]

(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for salaries which must not exceed by more than ten per centum (10%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than five per centum (5%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than five per centum (5%) the total amount appropriated and authorized for all purposes, except for salaries which must not exceed ten per centum (10%) the amount appropriated and authorized from such fund under the appropriation made from such fund in the budget adopted for the fiscal year immediately preceding and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding, provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such funds, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current

fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, such excess may be transferred to other funds as the county commissioners deem for the best interest of the county after a public hearing. Notice of said hearing must be given not less than thirty (30) days prior to said hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. Said notice must state the date, time and place of said hearing and state generally the purpose and proposed use of said funds.

(4) to (6) * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971.

Amendments

The 1969 amendment inserted exceptions relating to salaries in subsection (2).

The 1971 amendment added the second paragraph to subsection (3).

Repealing Clause

Section 2 of Ch. 5, 2nd Ex. Laws 1971 read "Section 16-2048, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 5, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.

16-1909. (4613.8) State examiner to make rules and regulations, etc.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(j).

CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

Section
16-2002. County registered warrants—interest.
16-2008. Board of county commissioners may issue bonds for certain purposes.
16-2010. Limitation on amount of bonds—issuance in excess of limitations void.
16-2011. Term of bonds—power to redeem—maximum interest.
16-2021. Petition and election required for bonds issued for other purposes.
16-2022. Form, contents and proof of petition.
16-2026. Registration.
16-2032. Sale of bonds.
16-2041. County bond funds.
16-2046. Exchange of bonds for amortization bonds.
16-2050. Investment of special moneys in county warrants—investment of school district or county high school moneys.

16-2001. (4622.1) **Investments of sinking funds of counties, etc.**

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(k).

16-2002. (4625) **County registered warrants—interest.** All county warrants hereafter issued, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury," from and after the date of such presentation and endorsement, shall draw interest at the rate fixed by the county board in accordance with law.

History: En. Sec. 1, p. 99, L. 1899; re-en. Sec. 2915, Rev. C. 1907; re-en. Sec. 4625, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1941; amd. Sec. 23, Ch. 234, L. 1971.

Amendments

The 1971 amendment substituted "fixed by the county board in accordance with law" for "of four (4%) per cent per annum" at the end of the section.

16-2008. (4630.1) **Board of county commissioners may issue bonds for certain purposes.** The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

(a) to (g). * * * [Same as parent volume.]

(h) Whenever the total indebtedness of a county exceeds five per centum (5%) of the value of the taxable property therein and the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full, the said board of county commissioners shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements and to issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series if the circumstances so require and each series may be either amortization bonds or serial bonds.

The plan agreed upon between the board of county commissioners and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds.

History: En. Sec. 1, Ch. 188, L. 1931; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "The constitutional limitation of" before "five per centum" near the beginning of subdivision (h).

16-2010. (4630.3) **Limitation on amount of bonds—issuance in excess of limitations void.** No county shall issue bonds for any purpose which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum (2½%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum (2½%), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by ch. 100, and once by ch. 391. The amendments were identical.

Section 75-4114, referred to in this section, was repealed by Sec. 1, Ch. 83, Laws 1951.

Amendments

The 1973 amendments deleted a final sentence reading: "The words 'value of the taxable property,' as used in this section, are used in the same sense as in section 5 of article XIII, of the constitution, and shall be given the same meaning and construction."

16-2011. (4630.4) **Term of bonds—power to redeem—maximum interest.** No bonds issued for any of the purposes designated in subdivisions (a), (b), (c), of section 16-2008, shall be for a longer term than twenty (20) years; no bonds issued for any of the purposes designated in subdivisions (d), or (e), of section 16-2008, shall be for a longer term than ten (10) years.

The following limitations as to term shall apply to all bonds issued under subdivision (f) of section 16-2008; No bonds shall be issued for a longer term than ten (10) years, provided, that if the unexpired term of the bonds to be refunded shall be more than ten (10) years then, in such event, the refunding bonds may be issued for such unexpired term; or if such ten (10) year term will require an annual tax levy for payment of such refunding bonds exceeding ten (10) mills on all property subject to taxation in the county, then, in such event, the term may be so extended as to reduce the required annual levy to ten (10) mills, provided, however, that the term shall not under any circumstances exceed twenty (20) years.

No bonds issued for any of the purposes designated in subdivision (g) of section 16-2008 shall be for a longer term than five (5) years.

Bonds issued for any of the purposes designated in subdivisions (h) and (i) of section 16-2008 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of ten (10) mills on all the property within the county subject to taxation and the term shall not exceed twenty (20) years. The length of the term required shall be estimated and calculated by the board of county commissioners based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes taking into account probable changes in the taxable valuation and losses in tax collections, provided, however, that irrespective of any miscalculation by the county commissioners in fixing the term of the bonds the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

All bonds issued for a longer term than five (5) years shall be redeemable at the option of the county on any interest payment date after one-half (½) of the term for which they were issued has expired and it shall be so stated on the face of the bonds. The maximum rate of interest which any of such bonds may bear shall be seven per cent (7%) per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973.

Amendments

The 1971 amendment increased the maximum rate of interest on bonds authorized to be issued under this chapter from 6% to 7% per annum; and made a minor change in phraseology.

The 1973 amendment substituted "after one-half (½) of the term for which they were issued has expired" in the final paragraph for "five (5) years from the date of issue"; and made minor changes in phraseology.

16-2021. (4630.7) **Petition and election required for bonds issued for other purposes.** County bonds for any other purpose than those enumerated in section 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in section 16-2027; and no such bond election shall be called unless there has been presented to the board of county commissioners a petition, asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified electors of the county.

History: En. Sec. 7, Ch. 188, L. 1931; amd. Sec. 12, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state and county taxes" from the end of the section.

16-2022. (4630.8) **Form, contents and proof of petition.** Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for

which the proposed bonds are to be issued, and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two (2) or more purposes may be combined in one (1) if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in such petition. Such petition may consist of one (1) sheet, or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk as hereinafter provided. The petition shall give the post-office address and voting precinct of each person signing the same.

Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated, or assisted in circulating such petition, that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same. The completed petition shall be filed with the county clerk who shall, within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors.

(2) * * * [Same as parent volume.]

(3) Whether such qualified signers constitute more or less than twenty per centum (20%) of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; amd. Sec. 13, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted "and whose names appear upon the last completed assessment roll for state and county taxes" from the end of subdivision (1); substituted "registered electors of the county" at the end of subdivision (3) for "registered electors whose names appear upon the last completed assessment roll for state and county taxes"; and made a minor change in phraseology.

16-2026. (4630.12) **Registration.** Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-3012, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

History: En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971.

Amendments

The 1971 amendment deleted from the beginning of the section a sentence read-

ing "In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote"; deleted "who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and" before "who are entitled to vote" in the first sentence of the second paragraph; and substituted a reference to section 23-3012 for a reference to section 23-515.

16-2031. (4630.17) **Notice to the state board of land commissioners.**

Cross-References

Board of land commissioners' functions transferred, sec. 82A-205(1)(b).

16-2032. (4630.18) **Sale of bonds.** The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds. The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal, and in determining the kind of bonds to be issued the board shall take into consideration not only the rate of interest demanded on each kind, but also all other known elements affecting the interests of the county, and for the board shall accept the bid which they shall judge most advantageous to the county. No attorney fees, brokerage or other fees, or commission of any kind shall be paid to any person or corporation for assisting in the proceedings, or in the preparation of the bonds, or in negotiating the sale thereof. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

History: En. Sec. 18, Ch. 188, L. 1931; amd. Sec. 9, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted the proviso to the third sentence; deleted "shall not bear a greater rate of interest than six per centum (6%) and" after "such bonds" in the proviso to the last sentence; and made a minor change in punctuation.

16-2041. (4630.27) **County bond funds.** The county treasurer of each county shall keep in his books a special and separate sinking and interest fund account for each series or issue of outstanding bonds issued by his county, and each such fund must at all times show the exact condition thereof. All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking and interest fund for which the same were levied, and such fund shall not be used for any purpose other than the payment of principal and interest on such bonds so long as any of such bonds remain outstanding. Provided, however, that interest from investment of moneys of the sinking and interest fund accounts of the bonds of any series or issue may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued. When all bonds of any series or issue, with the interest thereon, have been fully paid, or called in for payment, and there remains in the sinking and interest fund for such series or issue any

amount not required for the payment of such bonds and interest, or not used as above provided, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; amd. Sec. 1, Ch. 103, L. 1973.

Amendments

The 1973 amendment inserted the proviso constituting the third sentence; and inserted "or not used as above provided" after "not required for the payment of such bonds and interest" in the final sentence.

16-2046. (4630.32) **Exchange of bonds for amortization bonds.** Subject to the approval of the state board of land commissioners the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in section 16-2012, and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the state board of land commissioners. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell and issue refunding bonds in the manner provided by this act.

History: En. Sec. 32, Ch. 188, L. 1931; amd. Sec. 24, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the second sentence "but which shall not exceed six per centum (6%) per annum."

16-2048. (4631) **Repealed.**

Repeal

Section 16-2048 (Sec. 371, 5th Div. Rev. Stat. 1879), relating to transfer of surplus county funds, was repealed by Sec. 2, Ch. 5, 2nd Ex. L. 1971.

16-2049. (4632) **Petty cash fund.**

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(k).

16-2050. (4639.1) **Investment of special moneys in county warrants—investment of school district or county high school moneys.** (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay

such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said school district or county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county, school district, or county high school moneys under the state unified investment program established in Title 79, chapter 3.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973.

Amendments

The 1969 amendment added the last sentence to subsection (1); inserted "except interest * * * must be credited to the sinking fund" after "such investments,"

substituted "may be credited" for "shall be credited," deleted "notwithstanding the provisions of subsection (6) of section 16-2618" at the end of the second sentence and added the proviso; and added the third sentence to subsection (2).

The 1973 amendment added subsection (3).

Effective Date

Section 2 of Ch. 421, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

CHAPTER 23—VOTE NECESSARY ON PROPOSAL TO RAISE MONEY

16-2306. (4722) **Form of ballots—voting.**

Modification of Project

Referendum ballot for approval or disapproval of bond issue to provide funds for construction of a sports arena was not so misleading as to make a vote meaningless where the ballot provided that the funds were to be used for: (1) construction of a multi-use building; (2) construction cost of which was three million dollars; (3) issuance of bonds not to exceed twenty years; (4) equipping said building; (5) locating the same at the Midland Empire Fairgrounds; (6) a seating capacity of at least 10,000 persons; (7) an arena area of approximately 250 feet by 400 feet. Modification of the dimensions of the arena area from 250 feet by 400 feet to 350 feet by 350 feet was within the discretion of the board of county commissioners. Murphy v. McClintock, — M —, 503 P 2d 1013.

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS—GENERAL PROVISIONS

Section
16-2401. General qualifications for county office.
16-2402. General qualifications for district and township offices.
16-2404. Township officers.
16-2406. County and other officers, when elected or appointed and term of office.
16-2409. County and township officers may generally appoint deputies or assistants at discretion.
16-2412. Vacancies, how filled.

16-2401. (4723) **General qualifications for county office.** No person is eligible to a county office who at the time of his election is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; amd. Sec. 1, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4101.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

16-2402. (4724) **General qualifications for district and township offices.** No person is eligible to a district or township office who is not of the age of voting as required by the Montana constitution, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised, or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; amd. Sec. 2, Ch. 423, L. 1971. Cal. Pol. C. Sec. 4102.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" for "age of twenty-one years."

16-2403. (4725) **Repealed.**

Repeal

Section 16-2403 (Sec. 4312, Pol. C. 1895; Sec. 1, Ch. 112, L. 1913), enumerating the county officers, was repealed by Sec. 23, Ch. 123, Laws 1973. Chapter 491, Laws of 1973 purported to amend this section, but such amendment was void under section 43-515.

16-2404. (4726) **Township officers.** The officers of townships are two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R. C. M. 1921; amd. Sec. 10, Ch. 491, L. 1973. Cal. Pol. C. Sec. 4104.

Amendments

The 1973 amendment deleted "two justices of the peace" before "two constables."

16-2406. (4728) **County and other officers, when elected or appointed and term of office.** There may be elected or appointed in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One (1) county attorney; one (1) clerk of the district court; one (1) county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one (1) sheriff; one (1) treasurer, who shall be collector of the taxes; one (1) county superintendent of schools; one (1) county surveyor; one (1) assessor; one (1) coroner; one (1) public administrator; and at least one (1) justice of the peace. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Persons appointed to the different offices serve at the pleasure of the commissioners.

County auditors, and all elective township officers, may be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election if elective, and if not elective, the appointee serves at the pleasure of the commissioners; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated with the exception of the office of the justice of the peace, which office may not be combined or consolidated with any other office other than another justice of the peace office; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, or six (6) months prior to the appointment of aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R. C. M. 1921; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973;

amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973. Cal. Pol. C. Sec. 4109.

Compiler's Notes

This section was amended three times in 1973, once by Ch. 123, once by Ch. 129 and once by Ch. 491. None of the amendatory acts mentioned the others. Since amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all three amendments.

Amendments

Chapter 123, Laws of 1973, substituted "There may be elected or appointed" for "There shall be elected" at the beginning of the section; inserted references to the county attorney and clerk of the district court at the beginning of the second paragraph; added the third sentence to the second paragraph; substituted "may" for "must" before "be elected" in the first sentence of the third paragraph; inserted "if elective, and if not elective, the appointee serves at the pleasure of the commissioners" before the first proviso to the final paragraph; inserted "or six (6) months prior to the appointment of aforesaid officers" in the second proviso to the final paragraph; and made minor changes in style.

Chapter 129, Laws of 1973, inserted the reference to the county attorney at the beginning of the second paragraph; and deleted a reference to county attorneys at the beginning of the third paragraph.

Chapter 491, Laws of 1973, inserted the reference to the justice of the peace at the end of the first sentence of the second paragraph; and inserted "with the exception of the office of the justice of the peace, which office may not be combined with any other office other than another justice of the peace office" immediately before the semi-colon in the third paragraph.

16-2407. (4729) **Repealed.**

Repeal

Section 16-2407 (Sec. 4316, Pol. C. 1895), relating to elections and terms of county commissioners, was repealed by Sec. 58, Ch. 100, Laws 1973 and Sec. 23, Ch. 123, Laws 1973.

16-2409. (4731) **County and township officers may generally appoint deputies or assistants at discretion.** Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

History: En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R. C. M. 1921; amd. Sec. 2, Ch. 309, L. 1973. Cal. Pol. C. Sec. 4112.

Amendments

The 1973 amendment deleted "county assessor and" before "justice of the peace"; inserted "or assistants" following "deputies"; and substituted the second sentence for "but no compensation or salary must be allowed any deputy except as provided in this code."

16-2412. (4734) **Vacancies, how filled.** All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election if elective offices, and if nonelective offices, appointees serve at the pleasure of the commissioners.

History: En. Sec. 4321, Pol. C. 1895; re-en. Sec. 2966, Rev. C. 1907; re-en. Sec. 4734, R. C. M. 1921; amd. Sec. 17, Ch. 123, L. 1973. Cal. Pol. C. Sec. 4115.

Amendments

The 1973 amendment added "if elective offices, and if nonelective offices, appointees serve at the pleasure of the commissioners" at the end of the second sentence.

CHAPTER 25—CONSOLIDATION OF COUNTY OFFICES

Section
16-2501. Consolidation of county offices—petitions—time for filing—contents.
16-2501.1. Initiation of consolidation by county commissioners—procedure.

16-2502. Examination of petition—resolution of intent—consolidation by county commissioners—hearing and notice.
16-2502.1. Joint hearings.
16-2503. Conduct of hearing.
16-2504. Commissioners' right to consolidate offices without petition not limited.
16-2505. Board's order of consolidation to be published.
16-2507. Salary and bond of officer upon consolidation.

16-2501. (4749.1) **Consolidation of county offices—petitions—time for filing—contents.** At any time not later than seven (7) months before the date of any general election at which any county officers are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county. A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two (2) or more offices among several counties. Said petition shall be addressed to the board or boards of county commissioners of the counties affected, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the county taxpayers, and shall be signed by not less than fifteen per cent (15%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post-office address and voting precinct. In the case of consolidation of offices among several counties, the petition shall be signed by not less than fifteen per cent (15%) of the qualified electors in each of the counties affected.

History: En. Sec. 1, Ch. 125, L. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Chapter 100 and once by Chapter 458. Since the later of the two amendments incorporates the change made by the earlier, the text of the later amendment is used above.

Amendments

Chapter 100, Laws of 1973 deleted "enumerated in section 5 of article XVI of the constitution" following "county officers" in the first sentence.

Chapter 458, Laws of 1973 made the same change as did Chapter 100; inserted the second sentence; reduced the signature requirement for the petition from 25% to 15% in the third sentence; added the fourth sentence; and made minor changes in phraseology.

16-2501.1. Initiation of consolidation by county commissioners—procedure. The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this act. Any board or boards of county commissioners desiring to consolidate any two (2) or more offices or any two (2) or more offices among several counties under the provisions of this chapter shall first pass a resolution stating the intent of the board or boards of county commissioners to consider consolidation.

History: En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973.

Title of Act

An act to amend sections 16-2501, 16-2502, 16-2503, 16-2505 and 16-2507, R. C. M. 1947, deleting reference to the 1889 constitution and providing for consolidation of offices among counties; implementing article XI, section 3 of the 1972 Montana constitution.

16-2502. (4749.2) **Examination of petition—resolution of intent—consolidation by county commissioners—hearing and notice.** Upon the filing of

any such petition the board or boards of county commissioners shall cause the county clerk or clerks to forthwith examine the same and the registration records of the county and if, after such examination, such county clerk or clerks shall report to said board or boards of county commissioners that such petition or petitions has been signed by not less than fifteen per centum (15%) of the qualified electors of the county whose names appear on such registration records, said board or boards shall set a date for a hearing to consider said consolidation. Upon the passage of the resolution of intent by the board or boards of county commissioners proper notice and a date shall be set for a hearing to consider said consolidation. The date for the hearing shall be not more than twenty days after the filing of such petition or the passage of the resolution of intent. The county clerk or clerks shall cause notice of such hearing to be published one time in the official newspaper of the county, which publication must be at least ten days before the date set for said hearing, and if there be no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk or clerks, at least ten days before the date set for such hearing, in three public places in the county or counties. Said notice shall either contain a copy of said petition, with the signatures omitted, or a copy of the resolution of intent passed by the board or boards of county commissioners, and shall state the time and place fixed for hearing the same, and that on such hearing any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

History: En. Sec. 2, Ch. 125, L. 1935; amd. Sec. 3, Ch. 458, L. 1973.

Amendments

The 1973 amendment inserted "or boards" following "board" throughout the section; inserted "or clerks" following "clerk" throughout the section; inserted "or petitions" following "petition" in the middle of the first sentence; reduced the signature requirement in the first sentence from 25% to 15%; inserted the second sentence; inserted "or passage of the resolution of intent" at the end of the third sentence; inserted "or a copy of the resolution of intent passed by the board or boards of county commissioners," in the middle of the last sentence; and made minor changes in phraseology.

16-2502.1. Joint hearings. Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings provided the proper notice is given in each of the counties affected as set forth in section 16-2502.

History: En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973.

16-2503. (4749.3) **Conduct of hearing.** At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any qualified elector of the county affected shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper.

History: En. Sec. 3, Ch. 125, L. 1935; amd. Sec. 5, Ch. 458, L. 1973.

Amendments

The 1973 amendment substituted "qualified elector" for "taxpayer" near the be-

ginning of the second sentence; and made minor changes in style and phraseology.

16-2504. (4749.4) **Commissioners' right to consolidate offices without petition not limited.** Nothing herein contained shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this act.

History: En. Sec. 4, Ch. 125, L. 1935; amd. Sec. 8, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "named in the aforesaid article of the constitution" following "several offices" in the latter part of the section.

16-2505. (4749.5) **Board's order of consolidation to be published.** Whenever a board or boards of county commissioners shall make an order consolidating two or more offices such order shall be entered in full on its minutes of proceedings and such order shall be published in a newspaper of general circulation printed and published in the county or counties affected for a period of two successive weeks next following the date of the making and entry of such order.

History: En. Sec. 5, Ch. 125, L. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Chapter 100 and once by Chapter 458. Chapter 458 incorporated the changes made by Chapter 100 and made additional changes. Therefore, the compiler has used the text of Chapter 458 above.

Amendments

Chapter 100, Laws of 1973 substituted "county offices" for "offices enumerated in section 5 of article XVI of the constitution."

Chapter 458, Laws of 1973 made the same change as did Chapter 100; reduced the period of publication from six to two successive weeks; and made minor changes in phraseology.

16-2507. (4749.7) **Salary and bond of officer upon consolidation.** When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the board or boards of county commissioners, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations; provided that the board or boards of county commissioners shall, in June of each fourth year after adoption of this act, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution; provided further, that such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation; and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board or boards of county commissioners; and provided further, that the board or boards of county commissioners shall determine the number of deputies, stenographers, and clerks the said officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973.

Amendments

The 1973 amendment substituted "in June of each fourth year after adoption of this act" in the first proviso for "at the regular meeting of such board in June 1942, and at the regular meeting in June of each fourth year thereafter"; and made minor changes in phraseology.

CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

Section
16-2604. Registry of warrants—interest.
16-2618. Deposit of public funds by county, city and town treasurers.
16-2627. Membership in organizations of county treasurers.

16-2601. (4750) Duties of county treasurer.

Cross-References

School appropriations, entering on accounting records of county treasurer, sec. 75-6809.

16-2604. (4753) **Registry of warrants—interest.** When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971. Cal. Pol. C. Sec. 4148.

Amendments

The 1971 amendment substituted "a rate fixed by the board of trustees in accordance with law" for "four (4%) per cent per annum" at the end of the section.

Cross-References

School warrants, recording and payment, sec. 75-6811.

16-2618. (4767) **Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent ~~bank or~~ banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a savings or time deposit; provided that the bank or banks in which the money is deposited shall pay on the moneys the same rate of interest as is paid on money from private sources on the same terms. Refusal of any bank to pay said interest rate shall constitute a waiver of that bank's right to participate in the

ratable distribution of said moneys as set forth in subsection (4) of this act, and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) to (8). * * * [Same as parent volume.]

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973. Cal. Pol. C. Sec. 4161.

Amendments

The 1969 amendment rewrote the second sentence of subsection (2).

The 1973 amendment added the second proviso to the second sentence of subsection (1); and inserted that portion of the third sentence of subsection (1) preceding the proviso.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(1).

16-2621. (4767.3) **State examiner to sign trustee and deposit receipts.**

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(1).

16-2625. (4771) **Must permit state examiner and county clerk, etc.**

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(1).

16-2627. Membership in organizations of county treasurers. County treasurers of the state of Montana are authorized and empowered to take

out county membership in and to co-operate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. Payment for membership in such associations or organizations shall be made from county funds, in such amount as shall be approved by the board of county commissioners.

History: En. Sec. 1, Ch. 114, L. 1973.

Title of Act

An act to provide that county treasurers may take out memberships in certain organizations at the expense of the county.

CHAPTER 27—SHERIFF

Section

16-2723. Mileage and expense of sheriff.
16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage.
16-2725. Liability insurance for privately owned vehicles when used on official business.
16-2726. Department of public safety—supervision by commission.
16-2727. Sheriff as director—appointed or elected.
16-2728. Powers and duties of officers, patrolmen and director.
16-2729. Salaries.
16-2730. Officers' status as deputy sheriff.
16-2731. Liability insurance for sheriff's department.
16-2732. Coverage of liability insurance.
16-2733. County fund to pay for insurance.

16-2723. (4885) **Mileage and expense of sheriff.** Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state controller or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive twelve cents ($.12) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive twelve cents ($.12) additional per mile, the same to be in full for transporting and dieting of such person during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973.

Amendments

The 1973 amendment increased the mileage rate in both places in the third sentence from eleven to twelve cents per mile.

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds. No mileage shall be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971.

Title of Act

An act to provide that the board of county commissioners may purchase or lease motor vehicles from county funds for the use of the county sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds.

Amendments

The 1971 amendment deleted "when requested to do so by the county sheriff" after "county commissioners" in the first sentence.

16-2725. Liability insurance for privately owned vehicles when used on official business. The board of county commissioners shall provide liability insurance for not more than one (1) privately owned vehicle used by the sheriff, not more than one (1) privately owned vehicle used by the undersheriff, and not more than one (1) privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of one hundred thousand dollars ($100,000) for each person for bodily injury and medical expenses, three hundred thousand dollars ($300,000) for all persons per accident, and fifty thousand dollars ($50,000) per accident for property damage. This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of section 16-2724, R.C.M. 1947.

History: En. Sec. 2, Ch. 340, L. 1971.

16-2726. Department of public safety—supervision by commission. On agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriffs' office, a department of public safety. The department shall be under the supervision of a commission selected jointly by the county commissioners and the city or town, legislative bodies consisting of not more than seven (7) members.

History: En. Sec. 1, Ch. 347, L. 1973.

Title of Act

An act to permit consolidation of police departments and sheriffs' offices within a county and providing for salaries of the employees of the consolidated offices thereof.

16-2727. Sheriff as director—appointed or elected. The director of the department shall be the sheriff who may be elected, or may be appointed by the commission, in the event of municipal county government.

History: En. Sec. 2, Ch. 347, L. 1973.

16-2728. Powers and duties of officers, patrolmen and director. Officers and patrolmen of the city or town police department and deputies of the county sheriffs' office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriffs' deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers.

History: En. Sec. 3, Ch. 347, L. 1973.

16-2729. Salaries. The provisions of section 25-605, R.C.M. 1947 notwithstanding, the salaries of the director and employees of the department of public law enforcement shall be established by the commission and shall be paid by the city or town with the county commissioners of the county. Said salaries in any event shall not be less than that specified in section 25-605, R.C.M. 1947.

History: En. Sec. 4, Ch. 347, L. 1973.

16-2730. Officers' status as deputy sheriff. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of .....," and each police officer, patrolman and deputy sheriff shall be known and designated as deputy sheriff.

History: En. Sec. 5, Ch. 347, L. 1973.

Separability Clause

Section 6 of Ch. 347, Laws 1973 read "The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act."

16-2731. Liability insurance for sheriff's department. The board of county commissioners shall purchase liability insurance protecting the sheriff, undersheriff, deputy sheriffs, and members of any voluntary reserve organization acting under the direction of the sheriff. The liability insurance shall provide minimum coverage of one hundred thousand dollars ($100,000) per occurrence while the insured officer is acting on official county business.

History: En. Sec. 1, Ch. 482, L. 1973.

Title of Act

An act requiring counties to purchase liability insurance for sheriffs and sheriffs' departments.

16-2732. Coverage of liability insurance. The liability insurance shall pay all sums for which the insured officers shall become legally liable to pay as damages because of:

(1) bodily injury, sickness or disease sustained by any person accidentally caused by any act of the insured officer in making or attempting to make an arrest while acting within the scope of his duties as a law en-

forcement officer including damages for death, and for care and loss of services resulting from same; (2) false arrest, erroneous service of civil papers, false imprisonment, malicious prosecution, libel, slander, defamation of character, violation of property rights and other personal civil rights; (3) such other protection as the county commissioners may deem advisable and necessary.

History: En. Sec. 2, Ch. 482, L. 1973.

16-2733. County fund to pay for insurance. Such insurance shall be purchased from the county general fund.

History: En. Sec. 3, Ch. 482, L. 1973.

CHAPTER 28—COUNTY JAILS

Section
16-2802.1. County jails—common jails among counties.
16-2803. County jails, by whom kept and for what used.
16-2808. Provision and agreement for use of county jails for federal prisoners.
16-2818. Sheriff to receive all persons duly committed—payment for highway patrol prisoners—medical expense.

16-2801, 16-2802. (12466, 12467) **Repealed.**

Repeal

Sections 16-2801, 16-2802 (Secs. 3020, 3021, Pen. C. 1895), requiring a jail in each county and authorizing additional jails, were repealed by Sec. 3, Ch. 193, Laws 1973. For new law see secs. 16-2802.1 and 16-2803.

16-2802.1. County jails—common jails among counties. A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties, it is necessary or desirable to build, provide or utilize a common jail, they may do so in any city or town located within one of the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

History: En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973.

Title of Act

An act amending section 16-2803, R. C. M. 1947; providing for common jails among counties with operation and maintenance costs to be prorated among the using counties; eliminating the requirement that there be a jail in each county seat; eliminating statutory limitation of one thousand dollars ($1,000) which counties may spend on a common jail; and repealing sections 16-2801 and 16-2802, R. C. M. 1947.

16-2803. (12468) **County jails, by whom kept and for what used.** The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in the preceding section, such jail shall be kept by the sheriffs of the counties utilizing the same on a basis as the sheriffs so utilizing the common jail shall agree. The common jails are used as follows:

1 to 4. * * * [Same as parent volume.]

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R. C. M. 1921; amd. Sec. 2, Ch. 193, L. 1973. Cal. Pen. C. Sec. 1597.

Amendments

The 1973 amendment inserted the second sentence and the clause immediately preceding the numbered paragraphs.

Repealing Clause

Section 3 of Ch. 193, Laws 1973 read "Sections 16-2801 and 16-2802, R. C. M. 1947, are repealed."

16-2808. (12472.2) **Provision and agreement for use of county jails for federal prisoners.** Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of five dollars ($5) per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

History: En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971.

Amendments

The 1969 amendment increased the per diem payment for holding federal prisoners in county jails from $1.00 to $5.00; and increased the payment by the county to the sheriff from 75¢ to $2.50 per day.

The 1971 amendment deleted a second sentence reading, "The sheriff of the county, who has custody of such prisoners, shall be paid by the county for their support and subsistence at the rate of two dollars and fifty cents ($2.50) per day, per prisoner."

16-2818. (12482) **Sheriff to receive all persons duly committed—payment for highway patrol prisoners—medical expense.** The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to be paid out of the county treasury. In the event said person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall upon claim presented for the county by the clerk and recorder pay into the county treasury of the county the actual expenses incurred or the sum of five dollars ($5) per day, whichever is less, for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this act, a day shall be defined as a twenty-four (24) hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose. If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973. Cal. Pen. C. Sec. 1611.

Amendments

The 1971 amendment substituted "submit claims for the actual expenses incurred to the county commissioners for their determination" for "be allowed a reasonable compensation, to be deter-

mined by the board of county commissioners" in the first sentence; and made a minor change in punctuation.

The 1973 amendment inserted the second and third sentences.

DECISIONS UNDER FORMER LAW

Accounting to Commissioners

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273. (Decision prior to 1971 amendment of this section.)

16-2823. (12487) Duty of sheriff.

Board for County Prisoners

Sheriff has no clear legal duty to provide board of county commissioners with detailed itemized accounting of county funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273. (Decision prior to 1971 amendment of section 16-2818.)

CHAPTER 29—COUNTY CLERK

Section
16-2902. What to be recorded.

16-2902. (4796) **What to be recorded.** He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

2. to 15. * * * [Same as parent volume.]

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed.

History: En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971. Cal. Pol. C. Sec. 4235.

Amendments

The 1971 amendment added "and abstracts of such instruments which have been acknowledged or proved" at the end of subdivision 1.

16-2924. (4814) Annual report of county clerk.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(m).

CHAPTER 31—COUNTY ATTORNEY

16-3101. (4819) Duties of county attorney.

Power of Attorney General To Institute Actions in District Court

Although county attorney may be ordered by attorney general to initiate a felony prosecution in a district court, attorney general has no power to initiate the action independent of the county attorney. State ex rel. Woodahl v. District Court, — M —, 495 P 2d 182.

CHAPTER 32—COUNTY AUDITOR

Section
16-3203. Election—term—qualifications.
16-3204. Oath.

16-3203. (4825) **Election—term—qualifications.** There may be elected in and for each county of the class named in the preceding section, some person to serve as county auditor of the county for which he shall be elected for the term of four (4) years, and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of voting and who shall not have been for at least two (2) years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 187. Neither amendatory act mentioned nor incorporated all the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "age of voting as required by the Montana constitution" in the second sentence for "age of twenty-one years"; and made minor changes in style.

Chapter 100, Laws of 1973, deleted "male" before "person to serve as county auditor" in the first sentence; and deleted "as required by the Montana Constitution" from the language substituted in the second sentence by the 1971 amendment.

Chapter 187, Laws of 1973, substituted "may" for "shall" at the beginning of the section; deleted a clause relating to the 1892 election from the first sentence; and deleted "male" before "person to serve" in the first sentence.

16-3204. (4826) **Oath.** Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R. C. M. 1921; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973.

Amendments

The 1973 amendment substituted "such constitutional oath" for "such an oath" near the end of the section.

Cross-References

Bonds of county officers and employees, sec. 6-203 et seq.

CHAPTER 34—COUNTY CORONER

16-3401. (4848) **Coroner to hold inquest.**

Compiler's Notes

Sections 94-201-1 to 94-201-12, referred to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967.

CHAPTER 36—CONSTABLE AND JUSTICES OF THE PEACE

16-3607. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-808. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Be-

cause there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-808.

CHAPTER 37—DEPUTY COUNTY OFFICERS

Section
16-3705. Qualifications of deputy sheriffs, marshals and policemen.
16-3705.1. Work week of any deputy sheriff of a first and second class county.
16-3706. Maximum number of deputy treasurers, auditors and county attorneys.

16-3703. (4877) **Repealed.**

Repeal

Section 16-3703 (Sec. 2, Ch. 53, L. 1909), relating to the appointment of deputy assessors, was repealed by Sec. 113, Ch. 391, Laws 1973.

16-3705. (4879) **Qualifications of deputy sheriffs, marshals and policemen.** (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment, and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) to (e) * * * [Same as parent volume.]

Subsection (2) of this section shall not be applicable to any deputy sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) to (g) * * * [Same as parent volume.]

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973.

Amendments

Chapter 66, Laws of 1971, added the proviso at the end of subsection (1).

Chapter 81, Laws of 1971, deleted from subsections (2) through (7) phrases restricting the application of those subsections to first, second and third class counties.

The 1973 amendment inserted "and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control" immediately before the proviso to the first sentence of subdivision (1).

16-3705.1. Work week of any deputy sheriff of a first and second class county. Any person employed as a deputy sheriff of a first and second class county shall not be forced to work in excess of forty (40) hours per week, except in case of an emergency and shall be entitled to two (2) days off in each seven (7) day period.

History: En. 16-3705.1 by Sec. 1, Ch. 329, L. 1973.

Title of Act

An act relating to the work week of deputy sheriffs of first class and second class counties.

16-3706. (4880) **Maximum number of deputy treasurers, auditors and county attorneys.** The whole number of deputies allowed the county treasurer must not exceed in counties of the first class, two; in counties of all other classes, one; provided, that the board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year. The whole number of deputies allowed to county auditors in counties of the first, second and third classes must not exceed one. The whole number of deputies allowed the county attorney in counties of the first and second classes must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R. C. M. 1921; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted the former second sentence, which authorized additional deputies during assessment time, in order to implement article VIII, section 3 of the 1972 constitution.

CHAPTER 38—COUNTY CHARGES

Section
16-3802. Enumeration of county charges.

16-3802. (4952) **Enumeration of county charges.** The following are county charges:

1. and 2. * * * [Same as parent volume.]

3. The salary and actual expenses for traveling when on official duty allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The board of prisoners confined in jail.

5. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

6. The accounts of the coroner of the county for such services as are provided by law.

7. All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

8. The necessary expenses incurred in the support of county hospitals and poor farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

9. The contingent expenses necessarily incurred for the use and benefit of the county.

10. Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; amd. Sec. 3, Ch. 420, L. 1971. Cal. Pol. C. Sec. 4344.

Amendments

The 1971 amendment deleted "and for the board of prisoners" after "official duty" in item 3; inserted a new item 4; and renumbered former items 4, 5, 6, 7, 8, and 9 as items 5, 6, 7, 8, 9, and 10 respectively.

Repealing Clause

Section 4 of Ch. 420, Laws 1971 read "Sections 25-227 and 25-228, R. C. M. 1947, are repealed."

CHAPTER 39—COUNTY MANAGER FORM OF GOVERNMENT

(Repealed—Section 23, Chapter 123, Laws of 1973)

16-3901 to 16-3923. (4954.1 to 4954.23) **Repealed.**

Repeal

Sections 16-3901 to 16-3923 (Secs. 1 to 22, Ch. 109, L. 1931; Secs. 1 to 7, Ch. 56, L. 1933; Sec. 1, Ch. 72, L. 1943), relating to the county manager form of government, were repealed by Sec. 23, Ch. 123, Laws 1973. For new law, see secs. 16-5001 to 16-5019, especially section 16-5016. Chapter 391, Laws of 1973 purported to amend sections 16-3912 and 16-3916, but the amendments were void under section 43-515.

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

Section
16-4101. Planning and zoning districts—commission—creation.

16-4101. Planning and zoning districts—commission—creation. Whenever the public interest or convenience may require, and upon petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district, and to appoint a commission consisting of five (5) members. The commission is to consist of the three (3) county commissioners, the county surveyor and the county assessor. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses, and shall be residents of the county in which they serve. The commission hereby is authorized to appoint necessary employees and fix their compensation with the approval of the board of county commissioners, to select a chairman to serve for one (1) year, to appoint a secretary who shall keep permanent and complete records of its proceedings, and to adopt rules governing the transaction of its business. The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board shall be paid from a levy of not to exceed one (1) mill on the taxable valuation of the real property within such district, provided that no such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to section 11-2702 (2)

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971.

Amendments

The 1971 amendment added the proviso to the last sentence; and made a minor change in phraseology.

16-4103. Adoption of development district.

Variance and Nonconforming Use Distinguished

District court decision limiting nonconforming use for mobile homes to six trailers and court order to remove trailers exceeding that number did not make the question of a variance res judicata, and landowners were entitled to a hearing on the merits on their petition for variance. Wheeler v. Armstrong, — M —, 498 P 2d 300.

CHAPTER 42—MOSQUITO CONTROL DISTRICTS

Section
16-4201. Definitions.
16-4203. Petition for district—hearing.
16-4204. Notice of hearing—publication—posting.
16-4205. Hearing—objections to district—creation of district.
16-4206. Enlargement of districts—petitions—objections.
16-4207. Mosquito control board—members—term—per diem.
16-4209. Department of health and environmental sciences—duties.
16-4210. Mosquito control fund.
16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds.

16-4201. Definitions. In this act the expression:

(a) "Commissioners" means the board of county commissioners of any county;

(b) "District" means any mosquito control district created under the provisions of this act;

(c) "Board" means the mosquito control board for any district created under this act;

(d) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera;

(e) "Mosquito pest" means any group of mosquitos which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953; amd. Sec. 1, Ch. 337, L. 1973.

Amendments

The 1973 amendment deleted former subdivisions (d), (e) and (f); relettered subdivisions (g) and (h) as (d) and (e); and made minor changes in style.

16-4203. Petition for district—hearing. When a petition signed by not less than twenty-five per cent (25%) of the owners of any property within the boundaries and whose names appear as such property owners upon the last completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be given to all persons interested. Said petition shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973.

Amendments

The 1973 amendment substituted "owners of any property within the boundaries and whose names appear as such property owners upon the last completed assessment roll of the county in which the proposed district is situated" in the first sentence for "resident freeholders of any proposed district"; added "and request that the property within the boundaries be organized into a mosquito control district" to the end of the second sentence; and made minor changes in phraseology.

16-4204. Notice of hearing—publication—posting. The commissioners by resolution shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof. Commissioners shall cause notice to be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county. The notice shall state that any qualified elector within the boundaries of the proposed district in which the proposed district is situated may appear before the board at the time of hearing and show cause why the district should not be created, or may file his written objection to creation of the district at any time before the date of said hearing. The commissioners shall also cause notice to be given of the time and place of the hearing and methods of objections by publication in a newspaper within or nearest the district, and if the district is partly in one (1) county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two (2)

weekly issues. Posting and first publication shall be at least ten (10) days before the hearing. Accompanying petition for creation of a district shall be sufficient funds to defray the cost of publication and posting.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973.

Amendments

The 1973 amendment deleted three sentences providing for notice to nonresident landowners by registered mail or publication; rearranged the remaining language; inserted new first and third sentences; and made minor changes in phraseology.

16-4205. Hearing—objections to district—creation of district. At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth, and whether or not the notice required herein has been published and posted as required. At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district, and shall also consider the written objections to the creation of the district. Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing. At such a hearing or at any time following the first (1st) publication of notice of such hearing, until the time of said hearing, any qualified elector may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners determine there has been compliance with all of the requirements herein set forth, they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein, except, where, at the time of the hearing, the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district. Upon reconvening, the commissioners shall define and establish such boundaries as are advisable. Provided,

(1) that if fifty-one per cent (51%) or more of the qualified electors within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district;

(2) or, if, as the result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973.

Amendments

The 1973 amendment inserted the first,

second and third sentences; substituted "qualified elector" for "landowner" in the fourth sentence; substituted "determine there has been compliance with all of the requirements herein set forth" in the fifth sentence for "believe the creation of such a district to be in the best interest of such area and those resident therein"; inserted the exception at the end of the fifth sentence; inserted the designation for paragraph (1); substituted "fifty-one per cent (51%) or more of the qualified electors" in paragraph (1) for "the owners of fifty-one per cent (51%) or more of the land"; inserted paragraph (2); substituted "department of health and environmental sciences" for "state mosquito advisory committee" in the final paragraph; and made minor changes in phraseology and style.

16-4206. Enlargement of districts—petitions—objections. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the not less than twenty-five per cent (25%) of the owners of any property lying within the boundaries of the area proposed to be annexed to the district and whose names appear as such property owners upon the last completed assessment role of the county in which the said proposed area is situated. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section 16-4204. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If fifty-one per cent (51%) or more of the qualified electors of the area proposed to be annexed to the district file their objection to the creation of such district, the commissioners shall not act on such petition. If such additional area is added, such territory shall be subject to the tax authorized by this act together with the pre-existing area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.

History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973.

Amendments

The 1973 amendment substituted "not less than twenty-five per cent (25%) of the owners of any property" in the first sentence for "owners of twenty-five per cent of the resident owned land"; inserted "and whose names appear as such property owners upon the last completed assessment role of the county in which the said proposed area is situated" at the end of the first sentence; deleted "prior to the time of such hearing" at the beginning of the fourth sentence; substituted "fifty-one per cent (51%) or more of the qualified electors" in the fourth sentence for "owners of fifty-one per cent (51%) or more of the land included"; added the fifth and sixth sentences; and made minor changes in phraseology.

16-4207. Mosquito control board—members—term—per diem. Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three (3) nor more than five (5) members, each of whom shall be resident freeholder within the boundaries of the district and whose name appears as such property owner upon the last completed assessment roll of the county in which said district is situated. The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3)

years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first (1st) day of July in each year. The board shall be a body corporate and shall act as such, and the members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such board members shall serve without pay, except that the appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex officio members of such board without vote.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973.

Amendments

The 1973 amendment inserted "resident" before "freeholder" in the first sentence; added "and whose name appears as such property owner upon the last completed assessment roll of the county in which said district is situated" to the end of the first sentence; substituted "as allowed by state law" for "ten dollars ($10.00)" after "per diem" in the fourth sentence; and made minor changes in style.

16-4209. Department of health and environmental sciences—duties. (1) It shall be the duty of the department of health and environmental sciences to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(2) Annually on or before the first (1st) day of February, the board of each district shall submit to the department of health and environmental sciences and the department of agriculture for their review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 7, Ch. 337, L. 1973.

Amendments

The 1969 amendment made minor changes in former subsection (a), which established a state mosquito control advisory committee; inserted "upon request" before "to advise" in the latter part of subsection (b), now subsection (1); substituted "the state entomologist and the state department of health" in subsection (c), now subsection (2), for "such committee"; and made a minor change in phraseology.

The 1973 amendment deleted subsection (a); redesignated subsections (b) and (c) as (1) and (2); substituted "the department of health and environmental sciences" in subsection (1) for "such committee"; inserted "and environmental sciences" in the name of the department in subsection (2); substituted the department of agriculture for the state entomologist in subsection (2); and made minor changes in phraseology.

Cross-References

Advisory committee abolished, sec. 82A-305(3).

16-4210. Mosquito control fund. The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund, and at the time fixed by law for levy and assessment of taxes shall levy a tax of not exceeding five (5) mills on the dollar of the total taxable valuation in such district on all property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of

county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969.

Amendments

The 1969 amendment substituted "all property" for "real property" before "situated within the said district" in the first sentence.

16-4211. Dissolution of mosquito control district—hearing—notice—unexpended funds. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per cent (51%) of the qualified electors. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) public places within said district and to be published at least once in the official newspaper of the county, published in the district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) places in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations, and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget providing that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled together with legal proof thereof. Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the property which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973.

Amendments

The 1973 amendment substituted "at least fifty-one per cent (51%) of the qualified electors" at the end of the first sentence for "the owners of at least fifty-one per cent (51%) of the resident-owned land lying within such district"; inserted "and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations" in the fourth sentence; added the proviso to the fifth sentence; substituted "property" for "land" near the end of the sixth sentence; and made minor changes in phraseology.

Effective Date

Section 9 of Ch. 337, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

CHAPTER 43—PUBLIC HOSPITAL DISTRICTS

Section
16-4301. Purpose of act—allowable territory embraced within public hospital district.
16-4301.1. "Hospital facilities" defined.
16-4302. Petition to board of county commissioners.
16-4303. Hearing.
16-4304. Reference of creation of district at election.
16-4305. Resolution and order of board as respects election.
16-4306. Favorable vote—commissioners finally to organize district.
16-4307. Government of district—appointment, election and terms of trustees.
16-4308. Powers of district.
16-4309. Budget and tax levy.
16-4310. Tax collections and funds.
16-4311. Withdrawal of portion of district, petition for.
16-4312. Alteration of boundaries—annexation.
16-4313. Dissolution of district.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "to own and operate public hospitals, or to lease and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case" after "shall have power" in the first sentence.

16-4301.1. "Hospital facilities" defined. As used in this chapter, unless the context otherwise requires, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities and infirmaries.

History: En. Sec. 1, Ch. 336, L. 1973.

Title of Act

An act to add a new section to Title 16, chapter 43, R. C. M. 1947, relating to public hospital districts; providing for a definition of the term "hospital facilities" as used in the chapter.

16-4302. Petition to board of county commissioners. Proceedings for creation of a hospital district shall be initiated by a petition, signed by not less than thirty per centum (30%) of the qualified electors of the proposed hospital district, who are taxpayers upon property within the proposed hospital district and whose names appear on the last completed assessment roll for state and county taxes. The petition may consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner. Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition, that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk, who shall within fifteen (15) days thereafter, carefully examine the same and the county records showing

the qualifications of the petitioners, and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than thirty per cent (30%) of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last completed assessment roll for state and county taxes. The county clerk shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate. The board shall thereupon carefully examine the petition and, if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district. A notice of such hearing shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969.

Amendment

The 1969 amendment rewrote this section and, inter alia, inserted specific provisions as to form, circulation and certification of the petition. For previous text, see parent volume.

16-4303. Hearing. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, without additional published or posted notice, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required" from the end of the first sentence, and "At such hearing the board must" from beginning of former second sentence, making the present first sentence; and inserted "without additional published or posted notice," after "petitioners or objectors" in the second sentence.

16-4304. Reference of creation of district at election. The board of county commissioners, upon completion of the hearing hereinabove provided for, shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the first sentence, deleted "If" at the beginning, substituted "upon completion * * * provided for" for "shall determine that the petitioners have complied with the requirements herein set forth and that the prescribed notice has been published, It" and deleted "as in this act prescribed" at the end; and in the second sentence, deleted "and shall define and establish the boundaries of the district" after "described in the petition."

16-4305. Resolution and order of board as respects election. The board must, in its resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the date for such election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that if a special election is held the polls shall be open from 8 a. m. to 6 p. m., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county. Only qualified, registered electors residing within the proposed hospital district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state and county taxes shall have the right to vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence; and made numerous wording changes as follows: in the first sentence, deleted "or not" after "designate whether"; in the second sentence, substituted "date for such election" for "time and place for such election" and deleted "in said order" before "appoint and designate"; in the proviso of the third sentence, inserted "if a special election is held" and deleted "o'clock" before "a. m." and "p. m."; and in the sixth sentence, substituted "legal age" for "twenty-one (21) years of age."

16-4306. Favorable vote—commissioners finally to organize district. In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified. After twenty (20) days from the passage of such resolution, the validity of the creation of such hospital district and the regularity

of all proceedings preliminary thereto, shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953; amd. Sec. 6, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the second sentence.

16-4307. Government of district—appointment, election and terms of trustees. Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the registered electors residing in the district. The trustees must be elected from among the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1), two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there may be elected a trustee to serve for a term of three (3) years and until his successor shall be qualified and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. If there is no nomination petition filed it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971.

Amendments

The 1969 amendment, in the first sentence, substituted "registered electors residing in the district" for "persons within the district who have the same qualifications as voters upon the question of

'creation of the district' "; divided the former second sentence into the present second and fifth sentences; in the second sentence, substituted "registered electors qualified to vote at general elections" for "freeholders residing within said district"; and rearranged the order of the sentences.

The 1971 amendment substituted "may" for "shall" in the sixth sentence; inserted the present eighth sentence, providing for the appointment of a trustee for a hospital district when no nominations are submitted; and made minor changes in punctuation and phraseology.

16-4308. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon;

(2) Cause reports, plans, studies, and recommendations to be prepared;

(3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift;

(4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same;

(5) Adopt, by resolution, rules and regulations for the operation and administration of any and all hospital facilities under its control, and for the admission of persons thereto;

(6) Impose by resolution, and collect charges for all services and facilities provided and made available by it;

(7) Levy taxes as hereinafter prescribed;

(8) Borrow money and issue bonds as hereinafter prescribed;

(9) Procure insurance against liability of the district or its officers and employees or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) Sell or lease any of its facilities or equipment as may be deemed expedient;

(11) Cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants. Such a hospital district must admit to its facilities persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law. A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension and betterment of hospital facilities, and to provide an adequate working capital for a new hospital, but the amount of bonds issued for such purpose and outstanding at any time shall not

exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds. Such bonds shall be authorized, sold, issued and provision made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second or third class school districts by sections 75-3903 through 75-3934. Nothing herein shall be construed to preclude the provisions of sections 69-5301 through 69-5313 allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969.

Compiler's Notes

Sections 75-3903 through 75-3934, referred to in this section, were repealed by sec. 496, Ch. 5, Laws of 1971. For present law relating to school district bonds, see secs. 75-7101 to 75-7132.

Amendment

The 1969 amendment rewrote this section, rewording the general grant of powers, placing it at the beginning of the section, and adding additional specified powers. For previous text, see parent volume.

16-4309. Budget and tax levy. The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969.

Amendments

The 1969 amendment inserted "for all hospital district purposes other than payment of bonded indebtedness" after "The tax so levied" in the last sentence.

16-4310. Tax collections and funds. The procedures for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969.

Amendments

The 1969 amendment substituted the caption "Tax collections and fines" for "Regulations"; and deleted the former first sentence which read, "The trustees shall make proper rules and regulations for the management of such hospitals."

16-4311. Withdrawal of portion of district, petition for. Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%)

of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before the first Monday in March of any year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Any withdrawal shall be effective as of March 1 following the issuance of the withdrawal order. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal, to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969.

Amendments

The 1969 amendment inserted the seventh sentence and added the last sentence.

16-4312. Alteration of boundaries—annexation. The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall become and be a part of such public hospital district on the date fixed

in the order of annexation, and shall be subject to the taxes authorized by this act, including taxes for any pre-existing indebtedness, together with the pre-existing area of said district, and such taxes shall be uniform for the whole area and territory in the district, as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the last sentence, inserted "on the date fixed in the order of annexation," substituted "taxes" for "tax" in two instances, and inserted "including taxes for any pre-existing indebtedness."

16-4313. Dissolution of district. At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of property lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence.

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section
16-4416. Rates, charges and rentals for services.

16-4416. Rates, charges and rentals for services. The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated, controlled, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take

into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority, by resolution and after public hearing, to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year, not to exceed seven dollars ($7) per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system; to fix and establish an additional charge not to exceed seven dollars ($7) per unit user per year for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district not in excess of two (2) mills on each dollar of taxable valuation to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "operated, controlled, and under the jurisdiction of" for "construction in and for"; in the third sentence, inserted "public" before "hearing," raised the maximum per unit user charge from $5 per year to $7, raised the maximum additional charge from $3 to $7, substituted "for the operation and maintenance * * * a sewage treatment plant" for "reasonable expense of operation and maintenance of a sewage treatment plant" and made minor changes in phraseology.

CHAPTER 45—COUNTY WATER AND SEWER DISTRICTS

Section
16-4517. Bonded indebtedness.
16-4522. Sixty per cent vote necessary.
16-4535. Elections may be combined.

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "and the maximum rate of interest to be paid, which shall not exceed seven per cent (7%) per annum" before "and the proposition to be submitted to the electors" at the end of the section.

16-4522. Sixty per cent vote necessary. If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969.

Amendments

The 1969 amendment substituted "sixty per cent (60%) or more" for "more than two-thirds."

Effective Date

Section 2 of Ch. 335, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

16-4535. Elections may be combined. The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969.

Title of Act

An act allowing county water and sewer district elections to be combined.

Effective Date

Section 2 of Ch. 109, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 47—ZONING DISTRICTS

Section
16-4702. Recommendations by county planning board and city-county planning board.
16-4703. Establishment of districts—regulations for land use—scope—uniformity.
16-4705. Procedure for adoption of regulations and boundaries.
16-4711. Interim zoning map or regulation.

16-4702. Recommendations by county planning board and city-county planning board. The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only. This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "county planning board and the" in the first and second sentences; deleted "to act as a zoning commission" before "to recommend" in the first sentence; added the last sentence; and made minor changes in phraseology.

16-4703. Establishment of districts—regulations for land use—scope—uniformity. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3830 or section 11-3830.2, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) to (4) * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971.

Amendments

The 1971 amendment substituted "section 11-3830 or section 11-3830.2" for "section 11-3825, and which portions are contiguous to a city" in subsection (1).

16-4705. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board of county commissioners shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for thirty (30) days after first publication of this notice the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board of county commissioners may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board of county commissioners shall not adopt

the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971.

Amendments

The 1971 amendment inserted "of county commissioners" after "the board" in seven places; and made minor changes in punctuation.

16-4711. Interim zoning map or regulation. If a county is conducting, or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this chapter, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one (1) year from the date it becomes effective. The board of county commissioners may extend such interim resolution for one (1) year, but not more than one (1) such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971.

Separability Clause

Section 21 of Ch. 273, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 48—COUNTY PARKS

Section

16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records.
16-4801.1. Secretary to be appointed—designation of superintendent of parks.
16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted.
16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform.
16-4805. Auditing and allowance of claims against county.

16-4801. County board of park commissioners—qualifications and terms of commissioners—meetings—officers of board—accounts and records. There may be created in all counties a board of park commissioners, which shall be composed of the county commissioners and six (6) other persons appointed by county commissioners. The six (6) persons and three (3) commissioners so to be appointed shall have the same qualifications for the office of park commissioners as are required by section 11-710, R.C.M., 1947, for the office of county commissioners. The term of office of each park commissioner shall be three (3) years with and after the first Monday of May of the year in which he is appointed, and until his successor is appointed and qualified, save and except that two (2) of the commissioners first appointed shall hold office for the period of one (1) year, two (2) for two (2) years, and two (2) for three (3) years, with and after the first Monday of May, 1967, and until their

successors are appointed and qualified. Such board of park commissioners shall constitute a department of the county government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by section 59-413, which oath shall be filed in the office of the county clerk and recorder.

On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one (1) of their number president, and one (1) of their number vice-president, who shall hold their offices respectively for the term of one (1) year. The president, and in his absence, the vice-president, shall preside at all meetings of the board, and shall countersign all warrants issued by the board.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971.

Amendments

The 1971 amendment deleted from the end of the second paragraph provisions relating to county clerk as ex officio clerk of the board, for previous text of which see parent volume.

16-4801.1. Secretary to be appointed—designation of superintendent of parks. (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "proceedings of the board of park commissioners of (entitled) county." It shall be the duty of the secretary to keep an accurate account of all transactions of said board, and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year, which report shall be in duplicate, and after being approved by said board, one (1) of said duplicates shall be filed in the office of the county clerk and recorder, and one (1) in the office of the county treasurer, and, he shall perform such other services as the board from time to time shall require. In the absence of the secretary at any meeting held by the board, it shall designate one (1) of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board. The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state.

(2) The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board, and whose duties shall be of a managerial capacity, and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision.

History: En. Sec. 5, Ch. 290, L. 1971.

Effective Date

Section 6 of Ch. 290, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

16-4803. Receipt and disbursement of park funds—separate fund in treasury—liability of county restricted. All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the county treasurer, which may be signed by the secretary and countersigned by the president, or, in his absence, by the vice-president of the board of park commissioners, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasurer signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder. All moneys raised by tax for park purposes, or received by the board of park commissioners for the sale of hay, trees, plants, or from the use of or leasing of lands and facilities shall be paid into the county treasury, and the county treasurer shall keep all such moneys in a separate fund to be known as the "park fund." Such board shall have no power to incur liability on behalf of the county in excess of moneys on hand in, or taxes actually levied for, said park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971.

Amendments

The 1971 amendment substituted "may be signed by the secretary * * * county clerk and recorder" for "shall be signed by the county clerk * * * park commissioners" in the first sentence.

16-4804. Meetings of park commissioners—compensation of commissioners—contracts of board—failure of commissioner to qualify or perform. The board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each year, at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president, or, in his absence, the vice-president, upon giving to each member of said board at least twenty-four (24) hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice. A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. No park commissioner, directly or indirectly, shall be interested in, or benefit by, any contract made by the board or by its authority, or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect, for the period of three (3) consecutive months, to attend the meetings of said board without leave of absence from said board, or who shall fail for the period of twenty (20) days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the county, and

shall be signed by the president, or, in his absence, by the vice-president, of said board, or, upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum are in attendance and voting, and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

History: En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971.

Amendments

The 1971 amendment substituted "president, or, in his absence * * * county clerk and recorder" for "county clerk * * * of said board" in the last sentence.

16-4805. Auditing and allowance of claims against county. The board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing, signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board; provided, that no order or resolution providing for the payment or expenditure of money, or creating an obligation in excess of the sum of twenty-five dollars ($25), or authorizing the making of any contract, shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971.

Amendments

The 1971 amendment substituted "signed by the claimant * * * of said board" for "verified by the oath * * * said board" before the proviso; and substituted "of the secretary" for "by the clerk" at the end of the section.

CHAPTER 50—ALTERNATIVE FORMS OF COUNTY GOVERNMENT

Section
16-5001. Alternative forms of county government authorized.
16-5002. Optional forms.
16-5003. Initiation by county commissioners—petition—resolution—election date—notice.
16-5004. Adoption of optional form—when effective—disapproval.
16-5005. Discontinuance.
16-5006. Adoption of optional form not to affect present acts—transfer of powers.
16-5007. Optional form to elect county commissioners at large or by districts—number of members.
16-5008. Election of board at large—procedure for change in number of members—terms of office.
16-5009. Election of board by districts.
16-5010. Rules of board—meetings and records to be public—majority vote required.
16-5011. Organization of board.
16-5012. Powers vested in board of county commissioners.
16-5013. Specific powers and duties of the board.
16-5014. Elected county official form.
16-5015. County commissioner form.
16-5016. Manager form.
16-5017. Elected county executive.
16-5018. Performance of duties in absence of county executive or manager.
16-5019. Compensation established by county board—manager—executive.

16-5001. Alternative forms of county government authorized. The electors of any county may adopt an alternative form of county government authorized by the provisions of this act. Upon adoption as provided by such act, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this act, applicable to the adopted alternative form of government, shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

History: En. Sec. 2, Ch. 123, L. 1973.

Title of Act

An act to implement article XI, section 3, of the 1972 Montana constitution by providing for optional forms of county government; procedures to adopt and initiate an optional form of county government; adding county attorney and clerk of district court to the list of offices that may be consolidated; deleting the non-succession provision for county treasurer; amending sections 16-901, 16-2406 and 16-2412, R. C. M. 1947; and repealing sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947.

16-5002. Optional forms. An optional form of county government shall include the elected county official form, the county commissioner form, the manager form and the elected county executive form.

History: En. Sec. 3, Ch. 123, L. 1973.

16-5003. Initiation by county commissioners — petition — resolution — election date — notice. The board of county commissioners of any county may, by a two-thirds (⅔) vote of the board, or shall, within thirty (30) days upon receipt of a petition signed by fifteen per cent (15%) of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this act. If more than one optional form of county government is presented to the county commissioners by petition a primary election shall be held to determine the form to be submitted to the electors in a referendum. It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety (90) days nor less than sixty (60) days from the passage of the resolution, but not within thirty (30) days of any general election.

(1) The question submitted shall be worded: "Shall the county of ..... adopt the form of county government known as the ..... form."
(name of form)

(2) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three (3) consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four (4) consecutive weeks.

History: En. Sec. 4, Ch. 123, L. 1973.

16-5004. Adoption of optional form—when effective—disapproval. If a majority of the votes cast on the question of adopting an optional form

of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided, that no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government. If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next two (2) years following the date of disapproval.

History: En. Sec. 5, Ch. 123, L. 1973.

16-5005. Discontinuance. A proposition to discontinue an optional form of county government established under this act or to adopt another optional form of county government pursuant to this act may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under section 4 [16-5003] of this act.

History: En. Sec. 6, Ch. 123, L. 1973.

16-5006. Adoption of optional form not to affect present acts—transfer of powers. The adoption or discontinuance of an optional form of county government in any county as provided in this act shall not affect any act done, ratified, or affirmed, or any contract or other right or obligation other than contracts for personal services, accrued or established, or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect; but such rights shall attach to, and actions, prosecutions, or proceedings may be prosecuted and continued, or instituted and prosecuted against, by, or before the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules, regulations, and orders lawfully promulgated prior to such adoption shall continue in force and effect until amended or rescinded in accordance with the sections of this act.

On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, property, real and personal, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

History: En. Sec. 7, Ch. 123, L. 1973.

16-5007. Optional form to elect county commissioners at large or by districts—number of members. (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in section 9 [16-5008] of this act, or by districts as provided in section 10 [16-5009] of this act. The method of election shall be determined

by inclusion of the method in the optional form adopted pursuant to section 3 [16-5002] of this act.

(2) The board of county commissioners shall consist of such number of members as shall be determined by inclusion of either three (3) or five (5) members in the optional form adopted pursuant to section 3 [16-5002] of this act.

History: En. Sec. 8, Ch. 123, L. 1973.

16-5008. Election of board at large—procedure for change in number of members—terms of office. (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this act and thereby adopt a different size of the board of county commissioners, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the regular state election next following the adoptions of such provision, a sufficient number of county commissioners to bring the total membership of the board up to the number fixed. County commissioners shall first serve a term of six (6) years, except the candidates first elected under the provisions of this section.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this act shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and as to the other half of the decrease on the first Monday in January two (2) years later. The latter decrease in board size shall also be determined by the least time left on his term. Should two (2) commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners shall be six (6) years except as provided in this subsection. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for six (6) year terms. If the optional form as adopted provides for an increased membership on the board of county commissioners as provided in this act, the additional members shall be elected to the board at the first regular state election subsequent to the adoption of the alternative form.

(4) If the first election under an optional form of county government provided for in this act occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five (5) commissioners, there shall be elected for a staggered term, two (2) commissioners for a six (6) year term and one (1) commissioner for a four (4) year term, as provided in this act.

(5) At all succeeding elections, after the first regular state election subsequent to adoption of an optional form, all members of the board of county commissioners shall continue to be elected for six (6) year terms.

History: En. Sec. 9, Ch. 123, L. 1973.

16-5009. Election of board by districts. (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts there shall be a board of county commissioners who shall be nominated and elected as provided by general law, except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

History: En. Sec. 10, Ch. 123, L. 1973.

16-5010. Rules of board—meetings and records to be public—majority vote required. The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge. No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

History: En. Sec. 11, Ch. 123, L. 1973.

16-5011. Organization of board. The board of county commissioners shall organize on the first Monday of each year, except when the first Monday of the year falls on a holiday then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 12, Ch. 123, L. 1973.

16-5012. Powers vested in board of county commissioners. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this act.

History: En. Sec. 13, Ch. 123, L. 1973.

16-5013. Specific powers and duties of the board. The board of county commissioners shall:

(1) be the policy-determining body of the county, and except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate or abolish administrative units and transfer and assign their functions, powers and duties;

(3) have all powers and duties vested in or imposed upon it by the general law, except as otherwise provided for in this act;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property including buildings and other public improvements as provided by law;

(6) co-operate or join by contract pursuant to this act any city, county, state or political subdivision or agency thereof, or with the United States or any agency thereof, for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service; and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county, state, or political subdivision or agency thereof, or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies, and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;

(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriation for any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule, or act in any manner provided by general law.

History: En. Sec. 14, Ch. 123, L. 1973.

16-5014. Elected county official form. (1) Elected county official form defined. The elected county official form of county government shall be

that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected; a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) Modification of regular forms. There may be modification of the elected county official form adopted as hereinafter provided. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two (2) or more offices to co-operate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government, except as provided for in this act.

History: En. Sec. 15, Ch. 123, L. 1973.

16-5015. County commissioner form. County commissioner form defined. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government the board of county commissioners shall have the power to create, organize, alter, consolidate or abolish administrative units of county government and transfer and assign their functions, powers and duties.

History: En. Sec. 18, Ch. 123, L. 1973.

16-5016. Manager form. (1) Manager appointed or designated. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation of all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(2) Duties of the manager. It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of

the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

History: En. Sec. 19, Ch. 123, L. 1973.

16-5017. Elected county executive. (1) Elected county executive form defined. The elected county executive form of government shall be that form in which the government is administered by a single county official, elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board of county commissioners. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) Duties of the elected county executive. It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county, and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) Specific powers of the elected county executive. The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within ten (10) days of its adoption by the board of county commissioners, and the board of county commissioners may override the veto by a two-thirds (⅔) vote of all its members. Under the elected executive plan an ordinance or resolution shall become effective upon approval by the county executive, expiration of such ten (10) days without approval or veto, or the overriding of a veto.

History: En. Sec. 20, Ch. 123, L. 1973.

16-5018. Performance of duties in absence of county executive or manager. In case of absence or disability of the county executive or manager as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board of county commissioners designates by resolution.

History: En. Sec. 21, Ch. 123, L. 1973.

16-5019. Compensation established by county board—manager—executive. (1) The board of county commissioners shall establish a schedule of compensation for officers and employees which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners one (1) year prior to the county executive's term of office. In the first year, after adopting the county executive form of county government, the compensation for the county executive shall be one hundred fifty per cent (150%) of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

History: En. Sec. 22, Ch. 123, L. 1973.

Repealing Clause

Section 23 of Ch. 123, Laws 1973 read "Sections 16-2403, 16-2407 and 16-3901 through 16-3923, R. C. M. 1947, are repealed."

REVISED CODES OF MONTANA

VOLUME 2
Part 2
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 2 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2 (PART 2) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



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For index see pocket supplement to Replacement Volume 9

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TITLE 17—DAMAGES AND RELIEF

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Disability Insurance Policy

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was oppressive, malicious, or fraudulent, and in violation of statute requiring prompt payment of claim. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 482 P 2d 567.

17-204. (8662) Person entitled to recover damages may recover interest, etc.

Pre-judgment Interest

Pre-judgment interest on a wrongful death claim is forbidden. Wyant v. Dunn, 140 M 181, 368 P 2d 917; Daly v. Swift & Co., 90 M 52, 300 P 265; Ryan v. Ford Motor Co., 334 F Supp 674.

Time Interest Commences Running

Interest commenced running upon filing of complaint against surety company on bond where no demand had been made on surety until filing of complaint; such interest was due notwithstanding surety's contention that since damages were not certain until time of filing of judgment, it could not be charged with interest from time of filing of complaint. Lapke v. Hunt, 151 M 450, 443 P 2d 493.

17-205. (8663) In actions other than contract.

Conflicts

The conflicts principle requiring application of the law of the place of the tort for questions of pre-judgment interest has been followed by most courts. Ryan v. Ford Motor Co., 334 F Supp 674.

17-208. (8666) Exemplary damages, etc.

Attractive Nuisance

In attractive nuisance case, parents of deceased child were not entitled to exemplary damages in absence of proof of willful disregard of duty or indifference on part of contractor which would permit inference of malice; exemplary damages are extraordinary in nature and are allowed as punishment where something more than mere negligence is alleged and proven. Gagnier v. Curran Constr. Co., 151 M 468, 443 P 2d 894.

Counterclaim

On counterclaim by debtor against bank suing on note of debtor, evidence showing that bank converted funds and property of debtor to satisfy obligations of debtor's son for which debtor was not responsible and evidence showing bona fide intent of debtor to pay note was sufficient to warrant award of exemplary damages to debtor. Security State Bank of Harlem v. Kittleson, 149 M 183, 425 P 2d 72.

Fraud in Contract

Fact that alleged trickery by carpet seller arose during the contracting for the sale and installation of the carpeting did not make it "arise from the contract" within this section; the action was in tort, independent of the contract, and exemplary damages were not barred by this section. Paulson v. Kustom Enterprises, Inc., 157 M 188, 483 P 2d 708.

Insurance Policy Default

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was oppressive, malicious, or fraudulent, and in violation of statute requiring prompt payment of claim. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 482 P 2d 467.

Insurance Settlement

Where fraud of the insurer and agent in settling an automobile insurance claim by "cost of repair" and not "total loss" is alleged but no provision of the Insurance Code was violated, the insured was not entitled to exemplary damages. State ex rel. Cashen v. District Court, 157 M 40, 482 P 2d 567, distinguished in 157 M 181, 483 P 2d 709, 716.

Slander

Where homeowner's slanderous statements that builder had cheated him were made to numerous people in community over two-year period and where speaker stated that "he was going to tack his [builder's] hide to the wall," jury had basis for finding sufficient malice to justify award of punitive damages. McCusker v. Roberts, 152 M 513, 452 P 2d 408.

Water Rights Dispute

In action concerning disputed water rights plaintiff was not entitled to punitive damages under this section since defendants were not found to be guilty of oppression, fraud or malice; further, exemplary or punitive damages cannot be recovered in absence of award of actual damages. Smith v. Krutar, 153 M 325, 457 P 2d 459.

CHAPTER 3—MEASURE OF DAMAGES

17-301. (8667) Measure of damages for breach of contract.

Sale of Land

In computing damages for sale of land constituting constructive fraud in that representations of acreage exceeded actual acreage, buyer was not entitled to damages for loss of profits based on number of cows which total ranch would support but was entitled to damages for missing acreage computed from contract value on per acre basis without distinction between deeded and leased land or fenced or open land. Hardin v. Hill, 149 M 68, 423 P 2d 309.

17-302. (8668) Damages must be certain.

Profits

Where a contractor had lost his bonding capacity, and thereby future profits, because of a breach of contract by the state, and his accountants testified in detail as to his past earnings, net income, depreciation taken, etc., for 22 years, the jury's award of $78,000 was not too speculative as computed for the next 3 years, as the profits were reasonably foreseeable. Laas v. Montana State Highway Commission, 157 M 121, 483 P 2d 699.

CHAPTER 4—DAMAGES FOR WRONGS

17-401. (8686) Breach of obligation other than contract.

Aggravation of Pre-existing Injury

Measure of damages in tort action includes damages for aggravation of preexisting condition, but injured party is not entitled to recover damages which would have resulted from his previous condition even without aggravation; however, where it was reasonable to suppose that in absence of accident, intervertebral disc would have herniated within not more than two years, still injured party was entitled to damages resulting from hastening of back condition, including pain and suffering during additional period of disability reasonably caused by accident. Kegel v. United States, 289 F Supp 790.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-801. (8714) In what cases compelled.

Inadequate Relief by Pecuniary Compensation

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. Brown v. Griffin, 150 M 498, 436 P 2d 695.

17-804. (8717) Distinction between real and personal property.

Rebuttable Presumption

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance notwithstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. Brown v. Griffin, 150 M 498, 436 P 2d 695.

TITLE 18—DEBTOR AND CREDITOR

Chapter
4. Debt adjusters, 18-401 to 18-403.

CHAPTER 1—DEBTOR AND CREDITOR—DEFINITIONS AND GENERAL PROVISIONS

18-104. (8601) **Payments in preference.**

Contingent Liability

Debtor's sale of property to pay all creditors except one did not violate statute in light of fact that excepted debt was contingent liability which debtor could reasonably anticipate would not become due and owing. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

CHAPTER 4—DEBT ADJUSTERS

Section
18-401. Definitions.
18-402. Prohibition—penalty.
18-403. Exemptions.

18-401. Definitions. As used in this act the following words and terms shall have the following meanings unless the context clearly requires a different meaning. The singular shall include the plural and the masculine gender the feminine gender.

(1) "Person" means an individual, corporation, partnership, trust, firm, association or other legal entity.

(2) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management or debt-pooling service or the holding of oneself out, by words of similar import, as providing services to debtors in the management of their debts and contracting with the debtor for a fee to (a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor, or (b) receive from the debtor and disperse to his creditors any money or other thing of value.

History: En. Sec. 1, Ch. 300, L. 1969.

Title of Act

An act to prohibit the business of debt adjusting when conducted for profit, making certain acts unlawful, and prescribing penalties therefor; excluding certain persons from the provisions of this act.

18-402. Prohibition—penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500), or be imprisoned not more than six (6) months, or both.

History: En. Sec. 2, Ch. 300, L. 1969.

18-403. Exemptions. This act shall not apply to:

(1) Those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state.

(2) Banks and fiduciaries, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business.

(3) Title insurers and abstract companies, while doing an escrow business.

(4) Judicial officers or others acting under court orders.

(5) Nonprofit or charitable corporations or associations engaged in debt adjusting.

(6) Those situations involving debt adjusting incurred incidentally in connection with the lawful practice as a certified public accountant.

(7) Bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments.

(8) Employers for their employees.

(9) Any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are ten per cent (10%) of the amounts as paid by the debtor.

(10) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969.

Effective Date

Section 4 of Ch. 300, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

Chapter
1. Definitions and construction of terms—holidays—other general provisions, 19-103.1, 19-107, 19-123, 19-124.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS—OTHER GENERAL PROVISIONS

Section
19-103.1. **Printing defined.**
19-107. Legal holidays and business days defined.
19-123. **State gem stones.**
19-124. Official state grass.

19-103. (16) Certain words defined.

Negligence

In action to recover damages for reduced yield of dryland alfalfa seed allegedly caused by negligence of defendants in allowing weeds from defendant's field to blow across fields of plaintiff during windstorm, trial court erred by not directing verdict for defendant since evidence failed to show breach of duty by defendant and therefore did not establish prima facie case of negligence. Mang v. Eliasson, 153 M 431, 458 P 2d 777, explained in 156 M 477, 482 P 2d 599.

Property

Under this section, "property," as used in section 67-808, includes both real and personal property. State ex rel. Tucker v. District Court of Thirteenth Judicial District in and for Stillwater County, 155 M 202, 468 P 2d 773.

19-103.1. Printing defined. As used in the laws of the state of Montana, printing is the act of reproducing a design on a surface by any process.

History: En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973.

Title of Act

An act to define printing in Montana as an act of reproducing a design on a surface by any process.

Amendments

The 1973 amendment deleted "constitution and" preceding "laws of the state."

19-107. (10) Legal holidays and business days defined. The following are legal holidays in the state of Montana:

(1) Each Sunday.
(2) New Year's Day, January 1.
(3) Lincoln's Birthday, February 12.
(4) Washington's Birthday, the third Monday in February.
(5) Memorial Day, the last Monday in May.
(6) Independence Day, July 4.
(7) Labor Day, the first Monday in September.
(8) Columbus Day, the second Monday in October.
(9) Veterans' Day, the fourth Monday in October.
(10) Thanksgiving Day, the fourth Thursday in November.
(11) Christmas Day, December 25.
(12) State general election day.

If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

(1) Each Sunday.

(2) New Year's Day, January 1.

(3) Memorial Day, the last Monday in May.

(4) Independence Day, July 4.

(5) Labor Day, the first Monday in September.

(6) Thanksgiving Day, the fourth Thursday in November.

(7) Christmas Day, December 25.

(8) On such days as banks are closed in accordance with sections 1 through 5 [5-1058 to 5-1062] of this act.

Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, the fourth Monday in October, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971. Cal. Pol. C. Secs. 10-11.

Amendments

The 1969 amendment revised and reworded the section to enumerate the lists of legal and authorized bank holidays and made Memorial Day the last Monday in May instead of May thirtieth, Columbus Day the second Monday in October instead of October twelfth, and Veterans' Day the fourth Monday in October instead of November eleventh.

The 1971 amendment added to the list of holidays for banks closed on Saturdays subdivision (8) relating to days banks are closed during emergencies and special observances.

Effective Date

Section 2 of Ch. 89, Laws 1969 read "This act is effective January 1, 1971."

Cross-References

Closing of banks in emergency or for special observances, secs. 5-1058 to 5-1062.

19-108. (11) **Provisions of school code excepted.**

Compiler's Notes

Section 75-2204, referred to in this section, was repealed by Sec. 496, Ch. 5, Laws 1971.

19-123. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969.

Title of Act

An act naming the sapphire and the Montana agate the official Montana state gem stones.

19-124. Official state grass. The grass known as bluebunch wheatgrass, agropyron spicatum (pursh), shall be designated and declared to be the official grass of the state of Montana.

History: En. 19-124 by Sec. 1, Ch. 378, L. 1973.

Title of Act

An act establishing bluebunch wheatgrass as the official grass for the state of Montana.

TITLE 20—DEPOSIT

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-208. (7655) Extent of his liability for negligence.

Measure of Damages

Measure of damages in action to recover for sailing sloop destroyed by fire in bailee's warehouse was the reasonable value of the boat based upon opinion testimony of both parties in action. Aetna Life & Casualty Co. v. Stan-Craft Corp., — M —, 499 P 2d 776.

CHAPTER 3—DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

20-302. (7661) Degree of care required of depositary for hire.

Ordinary Care

A bailee for hire must use at least ordinary care for the preservation of the things stored; if the article placed in storage is in good condition and returned damaged or not returned at all, the presumption is that the bailee was negligent and the burden is upon the bailee to prove that he used due care. Aetna Life & Casualty Co. v. Stan-Craft Corp., — M —, 499 P 2d 776.

TITLE 21—DIVORCE

Chapter
1. Dissolution of marriage—divorce, 21-103.

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

Section
21-103. Causes for divorce.

21-103. (5736) **Causes for divorce.** Absolute divorces, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes:

1 to 6. * * * [Same as parent volume.]

7. Conviction of felony;

8. Irreconcilable differences, which have existed and persisted for a period of six months before the commencement of an action and which have caused the irremediable breakdown of the marriage. This cause need not be pleaded in the particular.

History: En. Sec. 132, Civ. C. 1895; amd. Sec. 1, Ch. 118, L. 1907; re-en. Sec. 3643, Rev. C. 1907; re-en. Sec. 5736, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1937; amd. Sec. 1, Ch. 185, L. 1945; amd. Sec. 1, Ch. 84, L. 1973. Cal. Civ. C. Sec. 92.

Amendments

The 1973 amendment added subdivision 8.

21-136. (5768) **Relief may be adjudged, when divorce is denied.**

Property Division

Property division may not be decreed in same suit in which husband is denied divorce and wife is granted separate maintenance. Stapleton v. Stapleton, — M —, 488 P 2d 1144, following Decker v. Decker, 56 M 338, 185 P 168 and Boggs v. Boggs, 119 M 540, 545, 177 P 2d 869, 872.

21-138. (5770) **Orders respecting custody of children.**

Modification of Amount of Award

District court was free to modify original decree to provide for child-support payments which were lower than those set forth in separation agreement. Gessell v. Jones, 149 M 418, 427 P 2d 295.

Modification of Decree

Evidence that mother had, since time of divorce, remarried, overcome previous emotional difficulties, and quit her job in order to provide for time and attention needed to raise child, supported modification of divorce decree, in best interests of child, so as to grant custody to mother. McCullough v. McCullough, — M —, 498 P 2d 1189.

Notice

It was improper to terminate custody at a hearing on contempt for nonsupport when respondent had not been given notice that custody would be at issue. State ex rel. Shelhamer v. District Court, — M —, 494 P 2d 928.

21-139. (5771) **Support of wife and children, etc.**

Alimony—Modification of Decree

Trial court acted properly in ordering husband, who had stopped paying alimony because of alleged changes in financial standing, to pay back alimony in full, since under this section modification of alimony applies only to future installments. Porter v. Porter, 155 M 451, 473 P 2d 538.

Joint Tenancy Property

Pursuant to M. R. Civ. P., Rules 18 (a) and 54 (c), it was proper for divorce court to divest wife of her interest in joint tenancy property and provide for payment of alimony in lieu thereof. Libra v. Libra, 157 M 252, 484 P 2d 748, overruling Emery v. Emery, 122 M 201, 200 P 2d 251 and affirming rule of Johnson v. Johnson, 137 M 11, 349 P 2d 310.

Modification of Decree for Support

Under this section court of sister state entering valid custody order retains continuing jurisdiction to modify such award after party has changed domicile to this state since change in child's domicile does not, in itself, deprive court of sister state of its jurisdiction; courts of either state may possess jurisdiction resulting in concurrent jurisdiction of matter. Corkill v. Cloninger, 153 M 142, 454 P 2d 911.

Orders as to Property

Equal division of the property accumulated during the marriage was not unreasonable and was within the court's power even though the husband had made greater contributions during the marriage and most of the property was held in his name. Cook v. Cook, — M —, 495 P 2d 591.

21-142. (5774) Property may be subjected to support, etc.

Survival of Support Obligation.

District court may make support obligation a continuing one that survives the father's death and is enforceable against his estate. Horning v. Estate of Lagerquist, 155 M 412, 473 P 2d 541.

TITLE 22—DOWER

Chapter
1. Dower, 22-108.

CHAPTER 1—DOWER

Section
22-108. Renunciation and form of.

22-108. (5820) **Renunciation and form of.** When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within six months after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to wit: "I, A B, widow of C D, late of the county of ....., state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of Congress, March 2, 1867. This section en. Sec. 8, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 235, Civ. C. 1895; re-en. Sec. 3715, Rev. C. 1907; re-en. Sec. 5820, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1969.

Amendments

The 1969 amendment shortened the time for renunciation from one year to six months.

Invalid Renunciation

Widow's renunciation of her husband's will was not valid, even though widow purchased family home from executor and executed a deed quitclaiming all interest in real and personal property of the estate, and even though there may have been no fraud, misrepresentation or breach of confidential relationship, in view of evidence that widow did not know her rights, did not understand terms of will and did not understand the significance of signing the quitclaim deed. Ericksen v. Ericksen, 152 M 179, 448 P 2d 144.

TITLE 23—ELECTIONS

Chapter

1. Time of holding elections—proclamations, Repealed—Section 248, Chapter 368, Laws of 1969.
2. Publication of questions submitted to popular vote, Repealed—Section 248, Chapter 368, Laws of 1969.
3. Qualifications and privileges of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
4. Election precincts, Repealed—Section 248, Chapter 368, Laws of 1969.
5. Registration of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
6. Judges and clerks of elections, Repealed—Section 248, Chapter 368, Laws of 1969.
7. Election supplies, Repealed—Section 248, Chapter 368, Laws of 1969.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, Repealed—Section 248, Chapter 368, Laws of 1969.
9. Party nominations by direct vote—the direct primary, Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
10. Political parties, Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
11. Ballots, preparation and form, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
12. Conducting elections—the polls—voting and ballots, Repealed—Section 248, Chapter 368, Laws of 1969.
13. Voting by absent electors, Repealed—Section 248, Chapter 368, Laws of 1969.
14. Voting by absent electors in United States service, Repealed—Section 248, Chapter 368, Laws of 1969.
15. Registration of electors absent from county of their residence, Repealed—Section 248, Chapter 368, Laws of 1969.
16. Voting machines—conduct of election when used, Repealed—Section 248, Chapter 368, Laws of 1969.
17. Election returns, Repealed—Section 248, Chapter 368, Laws of 1969.
18. Canvass of election returns—results and certificates, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
19. Failure of elections—proceedings on tie vote, Repealed—Section 248, Chapter 368, Laws of 1969.
20. Nonpartisan nomination and election of judges of supreme court and district courts, Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969.
21. Presidential electors, how chosen—duties, Repealed—Section 248, Chapter 368, Laws of 1969.
22. Members of Congress—elections and vacancies, Repealed—Section 248, Chapter 368, Laws of 1969.
23. Recount of ballots—results, Repealed—Section 248, Chapter 368, Laws of 1969.
24. Conventions to ratify proposed amendments to constitution of the United States, Repealed—Section 248, Chapter 368, Laws of 1969.
25. Electronic voting systems, Repealed—Section 248, Chapter 368, Laws of 1969.
26. Definitions and general provisions, 23-2601 to 23-2606.
27. Qualifications and privileges of electors, 23-2701, 23-2704, 23-2705.
28. Publication of questions submitted to popular vote, 23-2801, 23-2802.
29. Proclamations and publications, 23-2901 to 23-2904.
30. Registration of electors, 23-3001 to 23-3004, 23-3004.1, 23-3005 to 23-3030.
31. Election precincts, 23-3101 to 23-3103.
32. Judges and clerks of elections, 23-3201 to 23-3207.
33. Primary elections and nominations by certificate, 23-3301 to 23-3318, 23-3318.1, 23-3319 to 23-3321.
34. Political parties, committeemen and committees, 23-3401 to 23-3407.
35. Election supplies and ballots, 23-3501 to 23-3517.
36. Conduct of elections—the polls—voting and ballots, 23-3601 to 23-3618.
37. Absentee voting and registration, 23-3701 to 23-3724.
38. Voting machines, 23-3801 to 23-3822.
39. Electronic voting systems, 23-3901 to 23-3907.
40. Canvass of votes—returns and certificates, 23-4001 to 23-4019.
41. Recounts, 23-4101 to 23-4122.

42. Contests of bond elections, 23-4201, 23-4202.
43. Presidential electors, 23-4301 to 23-4307.
44. Members of Congress—elections and vacancies, 23-4401 to 23-4404.
45. Nonpartisan nomination and election of judges, 23-4501 to 23-4510, 23-4510.1, 23-4510.2, 23-4511.
46. Conventions to ratify amendments to constitution of the United States, 23-4601 to 23-4611.
47. Election frauds and offenses—Corrupt Practices Act, 23-4701 to 23-4775.
48. Constitutional conventions, 23-4801, 23-4802.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-101 to 23-106. (531 to 536) **Repealed.**

Repeal

Sections 23-101 to 23-106 (Secs. 1150, 1151, 1160 to 1163, Pol. C. 1895), relating to the time of holding elections and election proclamations, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-201, 23-202. (537.1, 538) **Repealed.**

Repeal

Sections 23-201 and 23-202 (Sec. 1, Ch. 130, L. 1919; Sec. 1, Ch. 62, L. 1927; Sec. 1, Ch. 104, L. 1945), relating to publication of proposed constitutional amendments and questions to be submitted to the people of the county or municipality, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-301 to 23-311. (539 to 544) **Repealed.**

Repeal

Sections 23-301 to 23-311 (Secs. 1180, 1181, 1183 to 1185, 1188, Pol. C. 1895; Sec. 1, Ch. 44, L. 1941; Secs. 1 to 4, Ch. 28, L. 1945; Sec. 1, Ch. 92, L. 1949; Sec. 1, Ch. 64, L. 1959), relating to the requirement for elections by ballot, qualifications of electors, privileges of electors, and the definition of "taxpayers," were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 4

ELECTION PRECINCTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-401 to 23-407. (545 to 551) **Repealed.**

Repeal

Sections 23-401 to 23-407 (Secs. 1243, 1244, Pol. C. 1895; Secs. 2 to 6, Ch. 113, L. 1911; Secs. 2 to 6, Ch. 74, L. 1913; Secs. 2 to 6, Ch. 122, L. 1915; Sec. 1, Ch. 25, L. 1929), relating to election precincts, ward boundaries, and designation of places for holding elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 5

REGISTRATION OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-501, 23-501.1, 23-502 to 23-534. (553 to 562, 566 to 586) **Repealed.**

Repeal

Sections 23-501, 23-501.1, 23-502 to 23-534 (Secs. 1, 7, 12, 17 to 24, 26, 29, 30, 32, 35 to 39, Ch. 113, L. 1911; Secs. 1, 7, 12, 15, 17 to 24, 26, 29, 30, 32, 35 to 40, Ch. 74, L. 1913; Secs. 1, 7 to 36, Ch. 122, L. 1915; Sec. 1, Ch. 38, L. 1917; Sec. 1, Ch. 29, L. 1919; Sec. 1, Ch. 58, L. 1919; Secs. 1 to 4, Ch. 97, L. 1919; Sec. 1, Ch. 235, L. 1921; Secs. 1, 2, Ch. 61, L. 1933; Sec. 1, Ch. 25, L. 1935; Sec. 1, Ch. 71, L. 1935; Sec. 1, Ch. 147, L. 1937; Secs. 1 to 6, Ch. 172, L. 1937; Sec. 1, Ch. 51, L. 1941; Sec. 1, Ch. 144, L. 1941; Secs. 1, 2, Ch. 177, L. 1943; Sec. 1, Ch. 167, L. 1945; Sec. 1, Ch. 83, L. 1953; Secs. 1, 2, Ch. 80, L. 1955; Secs. 1, 2, Ch. 18, L. 1959; Secs. 2 to 4, Ch. 64, L. 1959; Secs. 1 to 5, Ch. 98, L. 1965; Secs. 3, 4, Ch. 156, L. 1965; Secs. 1, 2, Ch. 139, L. 1967), relating to registration of electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612. (587 to 597) **Repealed.**

Repeal

Sections 23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612 (Secs. 6, 7, p. 461, Cod. Stat. 1871; Secs. 1173, 1260 to 1269, Pol. C. 1895; Sec. 1, Ch. 101, L. 1917; Secs. 1, 2, Ch. 43, L. 1923; Sec. 1, Ch. 61, L. 1937; Sec. 1, Ch. 85, L. 1941; Secs. 1, 2, Ch. 40, L. 1943; Sec. 1, Ch. 49, L. 1945; Sec. 2, Ch. 167, L. 1945; Sec. 1, Ch. 117, L. 1947; Sec. 1, Ch. 12, L. 1951; Sec. 1, Ch. 14, L. 1957; Sec. 1, Ch. 210, L. 1957; Secs. 1, 2, Ch. 99, L. 1961; Sec. 1, Ch. 46, L. 1963), relating to judges and clerks of elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 7

ELECTION SUPPLIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-701 to 23-713. (598, 600 to 611) **Repealed.**

Repeal

Sections 23-701 to 23-713 (Sec. 18, p. 463, Cod. Stat. 1871; Sec. 20, p. 140, L. 1889; Secs. 1174, 1270 to 1273, 1300, 1302, 1303, 1356, Pol. C. 1895; Sec. 1, Ch. 88, L. 1907; Secs. 1 to 4, Ch. 12, L. 1915; Sec. 5, Ch. 64, L. 1959), relating to pollbooks, ballots, ballot boxes, printed instructions to electors, return forms, and other election supplies, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-801 to 23-820. (612 to 618.1, 619 to 630) **Repealed.**

Repeal

Sections 23-801 to 23-820 (Secs. 1310 to 1317, 1319, 1320, 1322, 1330 to 1336, Pol. C. 1895; Secs. 2 to 9, 11, 12, 19, pp. 135 to 138, 140, L. 1889; Secs. 1 to 3, pp. 115, 116, L. 1901; Sec. 1, Ch. 15, L. 1925; Sec. 1,

Ch. 58, L. 1925; Sec. 1, Ch. 64, L. 1925; Sec. 1, Ch. 28, L. 1933; Sec. 1, Ch. 104, L. 1943; Sec. 1, Ch. 105, L. 1943; Sec. 1, Ch. 26, L. 1945; Sec. 1, Ch. 259, L. 1947; Sec. 1, Ch. 160, L. 1949; Secs. 5, 6, Ch. 156, L. 1965; Sec. 1, Ch. 86, L. 1967; Sec. 3, Ch. 194, L. 1967), relating to nominations for special elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

(Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-901 to 23-936. (631 to 641, 644 to 652, 654 to 663, 665 to 670) **Repealed.**

Repeal

Sections 23-901 to 23-936 (Secs. 1 to 10, 13 to 21, 23 to 29, 31 to 38, Initiative Measure Nov. 1912; Secs. 1, 3, Ch. 88, L. 1921; Sec. 1, Ch. 1, Ex. L. 1921; Secs. 1, 2, Ch. 133, L. 1923; Secs. 1, 2, Ch. 12, L. 1925; Sec. 1, Ch. 118, L. 1925; Sec. 1, Ch. 159, L. 1925; Sec. 1, Ch. 3, L. 1927; Sec. 1, Ch. 7, L. 1927; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 98, L. 1927; Sec. 1, Ch. 125, L. 1927; Sec. 1, Ch. 34, L. 1929; Sec. 1, Ch. 67, L. 1929; Sec. 1, Ch. 6, L. 1933; Sec. 1, Ch. 62, L. 1933; Sec. 1, Ch. 181, L. 1937; Sec. 1, Ch. 84, L. 1939; Sec. 1, Ch. 27, L. 1945; Sec. 1, Ch. 34, L. 1945; Sec. 3, Ch. 167, L. 1945; Sec. 1, Ch. 75, L. 1949; Sec. 1, Ch. 64, L. 1951; Secs. 1, 2, Ch. 6, L. 1953; Sec. 1, Ch. 8, L. 1953; Sec. 12, Ch. 214, L. 1953; Sec. 1, Ch. 19, L. 1955; Sec. 2, Ch. 207, L. 1955; Secs. 1 to 3, Ch. 266, L. 1955; Sec. 6, Ch. 64, L. 1959; Sec. 1, Ch. 219, L. 1959; Secs. 1, 2, Ch. 274, L. 1959; Sec. 1, Ch. 38, L. 1961; Secs. 2, 7, Ch. 156, L. 1965; Sec. 1, Ch. 151, L. 1967; Secs. 4, 5, Ch. 194, L. 1967), relating to primary elections, were repealed by Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 10

POLITICAL PARTIES

(Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-1001 to 23-1009. (673.1 to 673.8) **Repealed.**

Repeal

Sections 23-1001 to 23-1009 (Secs. 1 to 8, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951; Sec. 1, Ch. 55, L. 1953; Secs. 13 to 16, Ch. 214, L. 1953; Secs. 4 to 7, Ch. 266, L. 1955; Sec. 3, Ch. 274, L. 1959; Secs. 1, 8, Ch. 156, L. 1965), relating, to political parties, were repealed by Sec. 8, Ch. 266, Laws 1955; Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1101 to 23-1117. (677 to 681, 683 to 687) **Repealed.**

Repeal

Sections 23-1101 to 23-1107 (Secs. 1, 17, pp. 135, 139, L. 1889; Secs. 1350 to 1355, Pol. C. 1895; Sec. 1354, p. 117, L. 1901; Secs. 2, 3, Ch. 88, L. 1907; Sec. 1, Ch. 16, L. 1925; Sec. 1, Ch. 203, L. 1937; Secs. 1, 2, Subds. A to F, Ch. 81, L. 1939; Sec. 1, Ch. 170, L. 1939; Sec. 1, Subds. A to F, Ch. 141, L. 1947; Sec. 1, Subds. A to F, Ch. 79, L. 1949; Secs. 1 to 3, Ch. 72, L. 1953; Sec. 9, Ch. 156, L. 1965; Secs. 6, 7, Ch. 194, L. 1967), relating to form, printing and distribution of ballots, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1201 to 23-1228. (688 to 714) **Repealed.**

Repeal

Sections 23-1201 to 23-1228 (Sec. 11, p. 462, Cod. Stat. 1871; Secs. 22 to 27, pp. 141, 142, L. 1889; Secs. 1290 to 1292, 1358, 1360 to 1379, Pol. C. 1895; Secs. 1357 to 1359, 1361, 1364, pp. 118 to 120, L. 1901; Secs. 4, 5, Ch. 88, L. 1907; Sec. 26, Ch. 113, L. 1911; Sec. 26, Ch. 74, L. 1913; Sec. 26, Ch. 122, L. 1915; Sec. 1, Ch. 3, L. 1935; Sec. 1, Ch. 2, L. 1937; Sec. 1, Ch. 111, L. 1937; Sec. 1, Ch. 207, L. 1955; Sec. 1, Ch. 32, L. 1959; Secs. 7, 8, Ch. 64, L. 1959; Sec. 1, Ch. 77, L. 1961), relating to voting time allowance, time of and proclamations on opening and closing of polls, furnishing and arrangement of polling places, methods and manner of voting, and challenges, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 13

VOTING BY ABSENT ELECTORS
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321. (715 to 735) **Repealed.**

Repeal

Sections 23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321 (Secs. 1 to 20, Ch. 110, L. 1915; Secs. 1 to 21, Ch. 155, L. 1917; Secs. 1 to 3, Ch. 151, L. 1923; Sec. 1, Ch. 32, L. 1941; Secs. 1 to 17, Ch. 234, L. 1943; Sec. 1, Ch. 60, L. 1953; Secs. 1, 2, Ch. 104, L. 1953; Sec. 1, Ch. 152, L. 1955; Secs. 3 to 5, Ch. 18, L. 1959; Secs. 9 to 11, Ch. 64, L. 1959; Secs. 1 to 3, Ch. 216, L. 1959; Secs. 1 to 3, Ch. 108, L. 1963; Secs. 1, 2, Ch. 124, L. 1963), relating to voting by absent or physically incapacitated electors were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1401 to 23-1406. Repealed.

Repeal

Sections 23-1401 to 23-1406 (Secs. 1 to 6, Ch. 99, L. 1943; Secs. 6 to 10, Ch. 18, L. 1959), relating to voting by absent electors in United States service, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM COUNTY OF THEIR RESIDENCE
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1501 to 23-1503. Repealed.

Repeal

Sections 23-1501 to 23-1503 (Secs. 1 to 3, Ch. 190, L. 1943), relating to registration of electors absent from county of residence, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618. (757 to 773) Repealed.

Repeal

Sections 23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618 (Secs. 1 to 17, Ch. 168, L. 1907; Sec. 1, Ch. 6, L. 1909; Secs. 1 to 3, Ch. 99, L. 1909; Secs. 1 to 4, Ch. 246, L. 1921; Sec. 1, Ch. 31, L. 1935; Secs. 1 to 4, Ch. 19, L. 1943; Sec. 1, Ch. 26, L. 1947; Secs. 1, 2, Ch. 20, L. 1959; Sec. 16, Ch. 42, L. 1963; Sec. 1, Ch. 57, L. 1963; Sec. 10, Ch. 156, L. 1965), relating to examinations and specifications of voting readiness and the conduct of election when used, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 17

ELECTION RETURNS
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1701 to 23-1715. (774 to 782, 784 to 789) Repealed.

Repeal

Sections 23-1701 to 23-1715 (Secs. 22 to 25, p. 380, Bannack Stat.; Sec. 30, p. 143, L. 1889; Secs. 1400 to 1408, 1410 to 1415, Pol. C. 1895; Secs. 6 to 10, Ch. 88, L. 1907; Sec. 1, Ch. 112, L. 1937; Sec. 1, Ch. 65, L. 1943; Secs. 1 to 3, Ch. 23, L. 1945; Secs. 12 to 16, Ch. 64, L. 1959; Sec. 17, Ch. 42, L. 1963), relating to canvass of votes by judges of elections and the disposition and custody of returns were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES
(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1801 to 23-1819. (790 to 808) Repealed.

Repeal

Sections 23-1801 to 23-1819 (Secs. 2 to 15, 17, 18, pp. 299 to 305, L. 1891; Secs. 1170, 1430 to 1444, 1448 to 1450, Pol. C. 1895; Sec. 1, Ch. 84, L. 1909; Sec. 1, Ch. 55, L. 1949; Sec. 1, Ch. 50, L. 1959; Sec. 1, Ch. 87, L. 1959; Sec. 16, Ch. 97, L. 1961; Sec. 18, Ch. 42, L. 1963; Secs. 8, 9, Ch. 194, L. 1967), relating to the county and state canvass of returns, the issuance of certificates and commissions, and the duty of the secretary of state to print the election laws, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE
(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1901 to 23-1904. (809 to 812) Repealed.

Repeal

Sections 23-1901 to 23-1904 (Sec. 16, p. 305, L. 1891; Secs. 1171, 1445 to 1447, Pol. C. 1895; Sec. 10, Ch. 194, L. 1967), relating to tie votes for representatives in Congress, state officers, and judicial officers, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF SUPREME COURT AND DISTRICT COURTS

(Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969)

23-2001 to 23-2014. (812.1 to 812.11, 812.13 to 812.15) Repealed.

Repeal

Sections 23-2001 to 23-2014 (Secs. 1 to 11, 13 to 15, Ch. 182, L. 1935; Secs. 2 to 4, Ch. 229, L. 1961), relating to nonpartisan nomination and election of district court and supreme court judges, were repealed by Sec. 3, Ch. 20, Laws 1959; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2101 to 23-2111. (813 to 823) Repealed.

Repeal

Sections 23-2101 to 23-2111 (Secs. 1 to 5, 7, pp. 173, 174, L. 1891; Secs. 1460 to 1470, Pol. C. 1895; Sec. 1, Ch. 4, L. 1933; Sec. 1, Ch. 15, L. 1933; Sec. 1, Ch. 33, L. 1935), relating to election and duties of presidential electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2201 to 23-2206. (824 to 828) Repealed.

Repeal

Sections 23-2201 to 23-2206 (Secs. 2, 3, p. 306, L. 1891; Secs. 1480, 1481, 1490 to 1492, Pol. C. 1895; Secs. 1, 2, Ch. 126, L. 1915; Sec. 1, Ch. 146, L. 1965), relating to elections and vacancies in office of members of Congress, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2301 to 23-2323. (828.1 to 828.7, 829) Repealed.

Repeal

Sections 23-2301 to 23-2323 (Secs. 1 to 7, Ch. 27, L. 1935; Secs. 1 to 15, Ch. 42, L. 1963), relating to recounts of ballots, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2401 to 23-2411. (829.1 to 829.11) Repealed.

Repeal

Sections 23-2401 to 23-2411 (Secs. 1 to 11, Ch. 188, L. 1933; Secs. 11, 12, Ch. 194, L. 1967), relating to conventions for ratification of proposed amendments to the constitution of the United States, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2501 to 23-2507. Repealed.

Repeal

Sections 23-2501 to 23-2507 (Secs. 1, 2, 4 to 8, Ch. 20, L. 1965; Secs. 1, 2, Ch. 220, L. 1967) relating to the use of electronic voting systems, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 26

DEFINITIONS AND GENERAL PROVISIONS

Section
23-2601. Definitions.
23-2602. Elections by secret ballot.
23-2603. Determination of candidate elected.
23-2604. General election, when to be held.
23-2605. Time of opening and closing of polls.
23-2606. Penalty for violation of act.

23-2601. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Election" means a general, special, primary nominating, municipal election, or an election in a school district.

(2) "General election" means an election held for the election of officers throughout the state at times specified by law.

(3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.

(4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.

(5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

(6) "Party" means any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor.

(7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.

(8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.

(9) "Commissioners" means the board of county commissioners.

(10) "City" means any incorporated city or town.

(11) "Council" means any municipal council or commission.

History: En. Sec. 1, Ch. 368, L. 1969.

Compiler's Note

Chapter 368, Laws 1969 provided: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 23, Revised Codes of Montana, 1947."

Title of Act

An act for the codification and general revision of the laws relating to the election laws of the state of Montana; repealing sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through

23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 2206, 23-2301 through 23-2323, 23-2401 through 23-2411, 23-2501 through 23-2507, R. C. M. 1947.

Cross-References

Election offenses and corrupt practices, sec. 94-1401 et seq.

DECISIONS UNDER FORMER LAW

"General Election"

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Special Election"

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Vacancy"

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath 116 M 283, 292, 149 P 2d 913.

23-2602. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973.

Amendments

The 1973 amendment inserted "secret" before "ballot" at the end of the section.

23-2603. Determination of candidate elected. The person receiving the highest number of votes for any office at an election is elected to that office.

History: En. Sec. 3, Ch. 368, L. 1969.

23-2604. General election, when to be held. A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

History: En. Sec. 4, Ch. 368, L. 1969.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt Practices Act, secs. 94-1427 to 94-1474.

Election law violations, sec. 94-1401 et seq.

Initiative and referendum, sec. 37-101 et seq.

23-2605. Time of opening and closing of polls. (1) Except as provided in subsection (2) of this section:

(a) The polls must be opened at 8 a. m. on the morning of election day, and must be kept open continuously until 8 p. m. of that day;

(b) In precincts having less than one hundred (100) registered electors, the polls must be opened at 1 p. m. and closed at 8 p. m. of that day;

(c) Whenever all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or

making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p. m. However, the poll hours shall be as specified in subsection (1) of this section if the election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election.

History: En. Sec. 5, Ch. 368, L. 1969.

Cross-References

Airport bonds, sec. 1-804.
Beer, local option elections, sec. 4-350 et seq.
Cities and towns, bond elections, secs. 11-2301 to 11-2330.
County bonds and warrants, secs. 16-2001 to 16-2050.
Local option elections, state Liquor Control Act, sec. 4-142 et seq.
Retail liquor licenses, local option election, secs. 4-431 to 4-437.
School bond elections, secs. 75-7110 to 75-7117.
School elections, secs. 75-6401 to 75-6423.

23-2606. Penalty for violation of act. Anyone who violates any provision of this act for which no other penalty is specified is guilty of a misdemeanor.

History: En. Sec. 247, Ch. 368, L. 1969.

Cross-References

Bribery at elections, penalty, sec. 94-1423.
Disclosing contents of ballot after marking, penalty, sec. 94-1414.
Electioneering by election officials, penalty, 94-1413.
False nomination certificate, penalty, sec. 94-1412.

CHAPTER 27

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section
23-2701. Qualifications of voter.
23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax.
23-2705. Privilege from arrest.

23-2701. Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law;

(b) He must be eighteen (18) years of age or older;

(c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least thirty (30) days;

(d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973.

Amendments

Chapter 120, Laws of 1971, deleted "Except as provided in section 23-2702" from the beginning of subdivision (1); substituted "of the minimum age for voting prescribed by the constitution of the state of Montana" in former subdivision (1) (a), now (1) (b), for "twenty-one (21) years of age"; added to former subdivision (1) (a), now (1) (b), a provision

for voting in federal elections by 18-year-olds; substituted "has met the residence requirements for voting provided in the constitution of the state of Montana" in former subdivision (1) (b), now (1) (c), for "must have resided in the state one (1) year"; added to former subdivision (1) (b), now (1) (c), a provision for presidential voting by persons who have resided in the state for thirty days; and made minor changes in phraseology.

Chapter 158, Laws of 1971, substituted "No person may be entitled to vote" and "unless" in the preliminary paragraph of subdivision (1) for "every person, if registered by law, is entitled to vote" and "if"; inserted a new subdivision (1) (a); redesignated subdivisions (a), (b) and (c) of subdivision (1), respectively, as subdivisions (b), (c) and (d); and substituted "of the minimum age for voting prescribed by the constitution of the state of Montana" in subdivision (1) (b) for "twenty-one (21) years of age."

The 1973 amendment substituted "elections" in the preliminary paragraph of subdivision (1) for "general and special elections for officers which are elective, and upon questions submitted to the vote of the people"; substituted "eighteen (18) years of age or older" in subdivision (1) (b) for references inserted by the 1971 amendments to the state constitution and to federal voting; substituted the present subdivision (1) (c) for references inserted by Ch. 120, Laws of 1971, to the state constitution and to presidential voting by new residents; substituted "while he is serving a sentence in a penal institution" at the end of subdivision (2) for "unless he has been pardoned"; and substituted "to be of unsound mind" in subdivision (3) for "insane."

Repealing Clause

Section 2 of Ch. 40, Laws 1973 read "Section 11-716, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 120, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. Oregon v. Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Residence Requirements

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. Oregon v. Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Voting for Deceased Candidate

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. State ex rel. Wolff v. Guerkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-2701.1. Repealed.

Repeal

Section 23-2701.1 (Sec. 1, Ch. 158, L. 1971), relating to legislative policy and purpose of election laws according to former constitution, was repealed by Sec. 58, Ch. 100, Laws 1973, and Sec. 9, Ch. 454, Laws 1973.

23-2702, 23-2703. Repealed.

Repeal

Sections 23-2702 and 23-2703 (Secs. 7, 8, Ch. 368, L. 1969), relating to qualifications of electors at elections on incurring state indebtedness, were repealed by Sec. 2, Ch. 120, Laws 1971.

Compiler's Notes

Sections 3 and 4, Ch. 158, Laws of 1971, purported to amend these sections. However, the purported amendments are void under the provisions of section 43-515.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax. (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes, is submitted at an election other than a general biennial election, the registrar of each county shall publish in the official county newspaper, a notice signed by him, stating that registration will close at noon on the fortieth (40th) day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published ten (10) days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of section 37-107, R. C. M. 1947 apply to the printing and distribution of copies of the proposed law.

History: En. Sec. 9, Ch. 368, L. 1969.

Objection Waived

The objection that a measure creates a state debt, levy, or liability, and that therefore it should have been placed upon a separate ballot, is waived if not raised before the election. State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 290.

23-2705. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969.

Cross-Reference

Persons exempt from arrest, sec. 95-616.

CHAPTER 28

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section
23-2801. Advertisement of questions to be submitted.
23-2802. Publication and printing of amendments to constitution.

23-2801. Advertisement of questions to be submitted. Questions to be submitted to the people of the county or city must be advertised by publication in at least one (1) newspaper within the county or city once a week for two (2) successive weeks. One (1) of the publications must be upon the last day the newspaper is issued before the election.

History: En. Sec. 11, Ch. 368, L. 1969.

23-2802. Publication and printing of amendments to constitution. If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall:

(1) Have the proposed amendment or amendments published in full twice each month for two (2) months previous to the election at which they are to be voted upon by the people in not less than one (1) newspaper commonly circulated in each county.

(2) Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional

provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The printed pamphlets shall be distributed as provided in section 37-107, R. C. M. 1947.

History: En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973.

Compiler's Notes

In a letter to the secretary of state dated March 23, 1970, the attorney general of Montana ruled that, despite this section, the secretary of state is required to publish proposed constitutional amendments once each week for three months, as required by sec. 9, article XIX, constitution of 1889. But see secs. 8 and 9 (2), article XIV, constitution of 1972.

Amendments

The 1973 amendment changed the publication requirement in subdivision (1) from once each week for four weeks to twice each month for two months; substituted "election at which they are to be voted upon by the people" in subdivision (1) for "next general biennial election"; inserted "commonly circulated" near the end of subdivision (1); and made minor changes in phraseology.

Cross-Reference

Explanation of initiative, referendum and constitutional measures to be prepared by attorney general, sec. 37-104.1.

DECISIONS UNDER FORMER LAW

Referendums

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect section requiring publication of proposed constitutional amendments, indicated its intent to dispense with publication prior to general election of legislative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. Nordquist v. Ford, 112 M 278, 283, 114 P 2d 1071.

CHAPTER 29

PROCLAMATIONS AND PUBLICATIONS

Section
23-2901. Election proclamation by the governor—contents.
23-2902. Publication and posting by county commissioners.
23-2903. Election proclamation by county commissioners.
23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.

23-2901. Election proclamation by the governor—contents. Sixty (60) days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

(1) A statement of the time of the election and the offices to be filled;

(2) An offer of rewards stating: "There is a reward of one hundred dollars ($100) for the arrest and conviction of any person violating any of the provisions of sections 23-4701 through 23-4724, R.C.M. 1947. Rewards will be paid until the total amount expended reaches the sum of five thousand dollars ($5,000).

History: En. Sec. 13, Ch. 368, L. 1969.

Compiler's Notes

Sections 23-4701 through 23-4724 were originally numbered 94-1401 through 94-1424. For text, see bound Volume Eight under the latter sections.

Office Not Mentioned

The governor issued his proclamation giving notice of a general election and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor, the relator claimed that three judges should have been

mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judgeships, the petition was dismissed. State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403.

Sufficiency of Notice

A statement in the proclamation of the governor giving notice of a general election, that among other officers there was to be elected "also a district judge, in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

23-2902. Publication and posting by county commissioners. When a proclamation prescribed by section 23-2901 is received, the commissioners shall have a copy published in a newspaper published in the county if a newspaper is published therein, otherwise in a newspaper of general circulation therein, and shall post a copy ten (10) days or more before the election at each polling place.

History: En. Sec. 14, Ch. 368, L. 1969.

23-2903. Election proclamation by county commissioners. When a special election is ordered by the commissioners, they must issue an election proclamation containing the statement contained in section 23-2901 (1). The statement must be published and posted in the same manner as a proclamation issued by the governor.

History: En. Sec. 15, Ch. 368, L. 1969.

Notice Not Proclamation

The notice of election does not take the place of the election proclamation. Evers v. Hudson, 36 M 135, 154, 92 P 462.

Public Improvements

Prior section had no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions on the subject, found in that part of the codes relating to county government. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

Vacancies

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty, to call and provide for the holding of special elections to fill them. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts. The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each registrar. The registrar shall furnish each election precinct in his county with two (2) copies.

History: En. Sec. 16, Ch. 368, L. 1969.

CHAPTER 30

REGISTRATION OF ELECTORS

Section
23-3001. Highway patrol to submit new-voter lists to major political parties.
23-3002. County clerk as county registrar.
23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.

23-3004. Registry book and card index.
23-3004.1. Resident school district included in registration.
23-3005. Hours of registration—registration cards.
23-3006. Method of registering—absent electors in the United States service—felony provisions.
23-3007. Registration of infirm elector at his residence.
23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.
23-3009. Transferring registration to another precinct.
23-3010. Procedure for transferring registry.
23-3011. Inquiry as to previous registration—procedure.
23-3012. Lists of registered electors—precinct register.
23-3013. Cancellation of registry for failure to vote—reregistration.
23-3014. Cancellation of registry for other reasons—reregistration.
23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties.
23-3016. Close of registration—procedure.
23-3017. Registration while registry closed preceding election.
23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.
23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.
23-3020. Erroneous omission of name from precinct register—Certificate.
23-3021. Registration by naturalized citizen.
23-3022. Residence, rules for determining.
23-3023. Printing and posting of list of electors shown on precinct registers.
23-3024. Preparation of precinct register.
23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor.
23-3026. Commissioners to provide registrar with sufficient help.
23-3027. Charges to city or school district—warrant—when no precinct registers required.
23-3028. Copies of precinct registers available to any person upon written request—charge.
23-3029. Violations of act, penalty for.
23-3030. Cancellation of deceased electors.

23-3001. Highway patrol to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, four (4) copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the Montana highway patrol shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; amd. Sec. 1, Ch. 257, L. 1971; amd. Sec. 1, Ch. 132, L. 1973.

Amendments

The 1971 amendment inserted "compiled on a county by county basis" in the first sentence; and made a minor change in phraseology.

The 1973 amendment inserted "four (4) copies of" before "a list" in the first sentence.

23-3002. County clerk as county registrar. (1) Each county clerk and recorder is ex officio county registrar. He shall:

(a) Serve without extra pay or compensation;

(b) Have custody of registration books, cards, and other records provided for by this act.

(2) The official register of electors is an official record of the county clerk and recorder.

History: En. Sec. 21, Ch. 368, L. 1969.

23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties. (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint a minimum of two (2) deputy registrars who are not notaries public, a minimum of one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. The number of appointed deputy registrars for each county shall always be equally divided between the two (2) major political parties. A deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county;

(c) No duly appointed deputy registrar shall register any voter until such deputy registrar shall have been issued a certificate of approval by the county registrar, certifying that said deputy registrar has received instructions on registration procedure from the county registrar.

(3) Within three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar. Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for three (3) days after the deadline.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973.

Amendments

The 1973 amendment inserted "a minimum of" twice in the first sentence of subsection (2); inserted the third sentence in subsection (2); inserted subdivision (2) (c); added the second sentence to subsection (3); and made a minor change in phraseology.

23-3004. Registry book and card index. The registrars shall keep an official register in a manner which each registrar deems the most efficient. A card index shall be kept by the registrar and shall at all times be in the custody of the registrar. The form and information recorded in the registry book and on the registry cards shall be designated by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969.

23-3004.1. Resident school district included in registration. In the discretion prescribed by section 23-3004, R.C.M. 1947, the county registrar shall record the resident school district of each person registering to vote to allow the preparation of registered elector lists for each school district of the county.

History: En. Sec. 1, Ch. 243, L. 1971.

Title of Act

An act to require recording of the school district of residence when registering electors; and amending sections 23-3023 and 23-3027, R.C.M. 1947, providing for precinct registers.

23-3005. Hours of registration — registration cards. (1) The registrar's office shall be open for voter registration from 8 a. m. until 5 p. m. on all regular working days except legal holidays as defined by section 19-107, R. C. M. 1947, except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt.

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct.

History: En. Sec. 24, Ch. 368, L. 1969.

23-3006. Method of registering—absent electors in the United States service—felony provisions. (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and by:

(a) Answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) Signing and verifying or affirming the affidavit or affidavits on the back of the card.

(2) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) Mailing the registry card filled out and signed under oath to the registrar, or

(b) Mailing the federal post card application filled out and signed under oath to the registrar.

(3) A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not less than one (1) nor more than three (3) years, if:

(a) He falsely personates another and causes the person so personated to be registered; or,

(b) Falsely represents his name or other information required by registration to any registrar or deputy registrar and causes his name to be registered; or,

(c) Causes any name to be placed upon the registry lists other than in the manner provided by this act.

History: En. Sec. 25, Ch. 368, L. 1969.

23-3007. Registration of infirm elector at his residence. (1) If an elector is unable to appear before the registrar or a deputy registrar because of physical infirmity, he may send written notice to the registrar or to a deputy registrar asking that his registration be made at his residence.

(2) No person is entitled to receive reimbursement for expenses incurred in complying with this section.

History: En. Sec. 26, Ch. 368, L. 1969.

23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary. (1) A person who is not eligible to register because of residence requirements but who will be eligible on or before election day, may register with the registrar if he answers the questions of the registrar and it appears that he will become qualified to vote by election day.

(2) A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969.

23-3009. Transferring registration to another precinct. If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a deputy registrar of the new precinct, and the deputy registrar shall not receive compensation for this service, or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state.

History: En. Sec. 28, Ch. 368, L. 1969.

23-3010. Procedure for transferring registry. (1) When a request to transfer registry is received, the registrar shall compare the elector's signature on the request with his signature on the registry card and may question the elector on any information shown on the registry card.

(2) If the registrar is satisfied, he shall endorse on the registry card the date of the transfer and the precinct to which transferred.

(3) The registrar shall file the registry card in the register of the precinct of the elector's residence, or in the register of the precinct of transfer, and transfer the elector's name to the proper precinct in the register.

(4) Where the elector changes his place of registration as provided in section 23-3009 (1), the registrar shall file the new card in the register of the precinct of the elector's present residence and transfer the elector's name to the proper precinct in the register. The old registration card shall be marked "canceled" and placed in the "canceled file."

History: En. Sec. 29, Ch. 368, L. 1969.

23-3011. Inquiry as to previous registration—procedure. (1) The registrar shall question each person registering to ascertain whether he has previously registered in this state. If the person has previously registered, the registrar shall enter his name in a separate file which is indexed by counties. Cards for this purpose shall be in the form prescribed by the secretary of state.

(2) Not more than three (3) days after closing the registration books, the registrar shall forward the cards to the registrar where the applicant previously voted by registered or certified mail. The delivery receipt shall be kept on file with other election records.

(3) Upon receiving notice to cancel the registration of an elector, the registrar shall immediately draw red lines through the elector's name in the register and on the registration card.

History: En. Sec. 30, Ch. 368, L. 1969.

23-3012. Lists of registered electors—precinct register. Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls.

History: En. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973.

Amendments

The 1971 amendment substituted "an election at which voting is validly limited by the constitution to taxpayers" for "an election for the incurring of a state debt, issuance of bonds or debentures by the state, or the levying of a state tax" at the end of the first sentence of former subsection (2); and deleted from former subsection (2) a second sentence reading "No other evidence is necessary to show that the elector is a taxpayer."

The 1973 amendment deleted former subsection (2), which provided for indication of taxpayers on the precinct registers; and removed the designation of the remaining language as subsection (1).

23-3013. Cancellation of registry for failure to vote—reregistration. (1) Except as provided in subsection (3) of this section, within sixty (60) days after every general election in which a president is elected, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who have failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file";

(c) Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records.

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector who actually votes by absentee ballot shall not be canceled if his ballot is received and rejected by the registrar within ten (10) days succeeding the election.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973.

Amendments

The 1971 amendment inserted "and (4)" in subsection (1); added subsection (4) (now (3)); and made minor changes in phraseology and punctuation.

The 1973 amendment deleted a reference to subsection (4) from subsection (1); substituted "within sixty (60) days" for "immediately" in subsection (1); inserted "in which a president is elected" in subsection (1); deleted former subsection (3) and renumbered former subsection (4) as (3).

23-3014. Cancellation of registry for other reasons—reregistration. (1) The registrar shall cancel any registration card:

(a) At the written request of the person registered;

(b) When a certificate of the death of any elector is filed;

(c) Within forty-five (45) days prior to the closing of registration three (3) qualified registered electors residing within the precinct may challenge an elector by filing affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;

(d) When the insanity of the elector is legally established;

(e) If a certified copy of a final judgment of conviction of any elector of a felony is filed;

(f) If a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within thirty (30) days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on the registration card. If a person proves to the registrar that he is qualified, he may reregister.

(3) At the close of registration, the court clerk of each county shall send a list of those electors whose registrations have been cancelled due to a felony conviction to the secretary of state. The secretary of state shall compile a list of all such electors and send a copy of the list to each registrar.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971.

Amendments

The 1971 amendment added subsection (3).

23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties. (1) An elector may challenge the qualifications of another elector any time not later than twenty (20) days prior to an election. The challenge must:

(a) Be filed with the registrar and be signed by the elector;

(b) Be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) State the grounds of the challenge, objection, and disqualification.

(d) Notify the elector within five (5) days by registered United States mail that his qualifications as an elector have been challenged.

(2) The registrar shall:

(a) File the affidavit of challenge in his office;

(b) Deliver a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;

(c) Write opposite the name of any person whose qualifications are challenged the words, "to be challenged."

(3) An elector's right to vote may also be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) Test the qualifications of the elector challenged under oath if he applies to vote;

(b) Compare the answers of the elector with the entries in the precinct register books;

(c) Not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers, or the elector is disqualified for any cause under the law, or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one (1) or more electors of the county to be examined under oath as to

the qualifications of the challenged elector, and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969.

Date for Holding Election

Under prior section, a period of not less than sixty days was required to lapse between time an election was called and time it was held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

23-3016. Close of registration—procedure. (1) The registrar shall:

(a) Close registrations as follows: (i) for thirty (30) days before any federal election; (ii) at noon the day before election for voters entitled under the provisions of section 23-3724, R.C.M. 1947, to register to that time; (iii) for forty (40) days before any election other than hereinabove provided.

(b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county;

Sixty (60) days before the election, publish notice in a newspaper of general circulation in the county specifying the day registrations will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

(2) The notice shall state that electors may register for the ensuing election by appearing before the registrar or before any deputy registrar as provided by law.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971.

Amendments

The 1971 amendment rewrote subdivision (1) (a) which formerly read, "Close all registration for forty (40) days before any election"; substituted "Sixty days before the election" for "Twenty (20) days before the closing" at the beginning of the second paragraph of subdivision (1) (b); and made minor changes in style and phraseology.

Effective Date

Section 2 of Ch. 385, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Durational Residency Requirements

Durational residency requirements of 3 months in county and one year in state as conditions precedent to voting violate the equal protection clause of the fourteenth amendment; unreasonableness of the classification was established by the fact that the registration books in Tennessee were not closed until 30 days before the election and this was ample time to complete whatever administrative tasks were necessary to ensure the purity of the ballot box. Dunn v. Blumstein, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995.

23-3017. Registration while registry closed preceding election. During the time when the registry is closed preceding any election, a person may register and the registrar shall keep his registry card in a separate file until the official register is again open. At that time, all cards in the temporary file shall be placed in their proper position in the official register.

History: En. Sec. 36, Ch. 368, L. 1969.

23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register. (1) A person shall not vote at an election mentioned in this act unless his name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name

appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe, or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he shall not be allowed to vote until he has proved his identity by the oath of two (2) reputable electors of the precinct in which he is registered.

(3) The election judges in each precinct at every general or special election in a precinct register certified to them by the registrar shall:

(a) Mark a cross (X) upon the line opposite the name of the elector;

(b) Require the elector to sign his name upon one of the precinct registers;

(c) Require an elector, who is not able to sign his name, to produce two (2) electors who shall make an affidavit before the election judges in a form prescribed by the secretary of state. One of the election judges shall write on the affidavit the elector's name, note his inability to sign, and the names of the electors making affidavits. The affidavits shall be returned to the registrar with the other election records.

History: En. Sec. 37, Ch. 368, L. 1969.

Failure To Sign

Failure of the election judges of a precinct to require the electors to sign the registry books before voting at a primary election was the fault of the judges and not of the electors, and therefore their votes were legal and properly counted. Thompson v. Chapin, 64 M 376, 383, 209 P 1060.

23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969.

23-3020. Erroneous omission of name from precinct register—certificate. (1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the registrar a certificate of the error stating the precinct in which he is entitled to vote and present the certificate to the election judges which will entitle him to vote.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

History: En. Sec. 39, Ch. 368, L. 1969.

23-3021. Registration by naturalized citizen. When a naturalized citizen applies for registration, he must produce a certificate of naturalization or a certified copy upon which the registrar must enter the date and county where presented. The registrar must also enter the applicant's name.

History: En. Sec. 40, Ch. 368, L. 1969.

23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a place other than where his family resided with the intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the date of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971.

Amendments

The 1971 amendment deleted "while employed in the service of the United States or of this state" after "lose a residence" in subdivision (2); and made a minor change in punctuation.

Acts and Intent of Voter

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the res gestae, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. Sommers v. Gould, 53 M 538, 544, 165 P 599.

Inapplicable to Licensing of Automobiles

Section prescribing the conditions determining the right to vote with respect to residence of the voter had no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. Valley County v. Thomas, 109 M 345, 386, 97 P 2d 345.

Presumption

Predecessor to subdivision (8) was held to be in reality a rule of evidence. Carwile v. Jones, 38 M 590, 602, 101 P 153.

Residency Requirements

Durational residency requirements of 3 months in county and one year in state as conditions precedent to voting violate the equal protection clause of the fourteenth amendment; unreasonableness of the classification was established by the fact that the registration books in Tennessee were not closed until 30 days before the election and this was ample time to complete whatever administrative tasks were necessary to ensure the purity of the ballot box. Dunn v. Blumstein, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995.

23-3023. Printing and posting of list of electors shown on precinct registers. (1) The registrar shall have a list printed of all registered electors shown on the precinct registers of the county or city ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) A copy of the list of registered voters shall be posted at the polling place. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election of city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed.

(5) The list of registered voters prepared for a primary election may be used for the general election only if a supplemental list giving the names of electors who have registered after the first list was prepared is printed.

(6) The expense of printing this list shall be paid by the county or city in which the election is to be held.

History: En. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973.

Amendments

The 1971 amendment deleted "or first class school district" after "city" in subsection (1); and deleted "or school district" after "city" in subsection (6).

The 1973 amendment deleted "Ten (10) days or more before any election," from the beginning of subsection (3); deleted "or posted" from the end of subsection (4); and deleted "posted and" and "and posted" from subsection (5).

23-3024. Preparation of precinct register. After the closing of the official register and before the election, the registrar shall:

(1) Prepare a "precinct register" for each precinct for use by clerks and election judges;

(2) List the names of electors in alphabetical divisions;

(3) Show all information from the registry card of each elector, except the oath of the elector;

(4) Deliver a certified copy of the precinct register to the election judges prior to the opening of the polls;

(5) Combine into one (1) precinct register the names of all electors in the several precincts where the precincts in city elections, or elections in school districts of the first class, include more than one (1) county precinct.

(6) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing, and the precinct register or registers shall not be prepared.

History: En. Sec. 43, Ch. 368, L. 1969.

23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor. A person whose vote has been rejected who offers to vote at the same election at any other polling place is guilty of a misdemeanor.

History: En. Sec. 44, Ch. 368, L. 1969

23-3026. Commissioners to provide registrar with sufficient help. The commissioners shall provide the registrar with sufficient help for the duties imposed by this act. The cost of stationery, printing, publishing and posting are a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969.

23-3027. Charges to city or school district—warrant—when no precinct registers required. (1) For each name entered on a precinct register prepared for a city or school district, the registrar shall charge the city or school district three cents ($.03). He shall also charge the actual expense incurred on account of the city or school district.

(2) The council or board of school trustees shall order a warrant drawn for the expenses specified in subsection (1) of this section within thirty (30) days after notification of the charges.

(3) If no general city election is required, the registrar shall not prepare precinct registers.

(4) If there are only as many candidates nominated as there are vacancies on a first class school district board of trustees, the registrar shall not prepare precinct registers.

(5) Within two (2) days after nominations are legally closed, the city clerk or clerk of a first class school district shall notify the registrar when no precinct registers are required.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971.

Amendments

The 1971 amendment deleted "first class" before "school district" in the first sentence of subsection (1); and deleted "in printing and posting the lists of electors, publishing notice, and other expenses incurred" after "actual expense incurred" in the second sentence of subsection (1).

23-3028. Copies of precinct registers available to any person upon written request—charge. Upon written request, the registrar shall furnish any person a copy of the official precinct registers. Upon delivery, the registrar shall collect a charge of five cents ($.05) for each name entered in the official register.

History: En. Sec. 47, Ch. 368, L. 1969.

23-3029. Violations of act, penalty for. (1) Any person or any officer of a county, city, or school district required to perform duties under this

act who willfully or knowingly fails to do so shall be fined not less than three hundred dollars ($300) nor more than one thousand dollars ($1000), or be imprisoned in the county jail for not less than three (3) months nor more than one (1) year. If an officer is involved, the judge of the district court shall also remove him from office.

(2) Any person who makes false answers; violates or attempts to violate any of the provisions of this act; mutilates, secretes, destroys, or alters election records except as provided by law; or knowingly encourages another to violate the act; or any public officer or other person upon whom any duty is imposed by this act who willfully neglects that duty or willfully performs the duty in a way which hinders the purposes of this act is guilty of a felony. Upon conviction he shall be imprisoned for not less than one (1) year nor more than fourteen (14) years. If a public officer, he shall also forfeit his office and never be qualified to hold public office again[,] either elective or appointive.

History: En. Sec. 48, Ch. 368, L. 1969.

23-3030. Cancellation of deceased electors. Each county clerk shall immediately cancel all registrations of individuals reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under section 91-4458, R.C.M. 1947.

History: En. 23-3030 by Sec. 1, Ch. 126, L. 1973.

Title of Act

An act providing that lists furnished to the clerks and recorder under section 91-4458, R. C. M. 1947, shall be used by the clerks and recorder to cancel the registration of deceased electors from the election rolls.

CHAPTER 31

ELECTION PRECINCTS

Section

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.
23-3102. Ward boundaries, certification of changes—map.
23-3103. Designation of polling place.

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts. (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held, except that the commissioners may change the boundaries of precincts in the year during which a general biennial election will be held when the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of reapportionment plans under article V, section 14, of the 1972 Mon-

tana constitution. In those instances, the changing of precinct boundaries must be accomplished within sixty (60) days of the filing of the final reapportionment plan.

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all precincts and school districts within the county.

(4) The boundaries of election precincts may conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts.

(5) A ward or school district may be divided into two (2) or more precincts, and a precinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, precincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973.

Amendments

The 1973 amendment added to the first paragraph of subsection (3) the clause and sentence relating to precinct boundary changes following the adoption of reapportionment plans; substituted "may conform" for "must conform" in subsection (4); and made a minor change in phraseology.

23-3102. Ward boundaries, certification of changes—map. Not more than ten (10) days after ward boundaries have been changed, the city council must certify any changes or alteration in the ward boundaries to the registrar and deliver to him a map showing boundaries of the wards, the streets, avenues and alleys by name and the wards by numbers.

History: En. Sec. 19, Ch. 368, L. 1969.

23-3103. Designation of polling place. The commissioners shall make an order designating the place within each precinct where the election will be held at the session at which election judges are appointed. Copies of the order must be posted immediately in three (3) public places in the precinct.

History: En. Sec. 20, Ch. 368, L. 1969.

Changing Designation

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act, nothing was shown affirmatively by pleadings or otherwise that the judges of election at the precinct had not pursued this section giving them authority to change the place of election upon two days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. State ex rel. Moore v. Patch, 65 M 218, 225, 211 P 202.

CHAPTER 32

JUDGES AND CLERKS OF ELECTIONS

Section
23-3201. Appointment of election judges and clerks—second board of election judges—duties.
23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions.
23-3203. Judges and clerks to serve until others appointed.
23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.
23-3205. Oath of judges and clerks—may administer oaths.
23-3206. Instruction of judges and clerks.
23-3207. Compensation of judges and clerks.

23-3201. Appointment of election judges and clerks—second board of election judges—duties. (1) At their regular meeting next preceding a general primary election, the commissioners shall appoint five (5) election judges and two (2) clerks for each precinct having two hundred (200) or more electors and three (3) election judges and two (2) clerks for each precinct having less than two hundred (200) electors. Judges for new precincts shall be appointed based upon the estimated number of electors.

(2) If a precinct has three hundred fifty (350) or more electors, the commissioners may appoint a second board of five (5) election judges and two (2) clerks who shall have the same qualifications as the first board. The second board shall:

(a) Meet at their respective polling places as ordered;

(b) Count and tabulate ballots as soon as the first board has completed their duties in regard to the voting.

(3) If counting and tabulating the ballots is not completed by 8 a. m. on the day following the election, the first board shall reconvene and relieve the second board until 8 p. m. when the second board shall again reconvene and relieve the first board until the ballots are counted and tabulated.

(4) The election judges constituting the boards shall number the ballots and count the tally upon the tally sheets and indicate upon the tally sheets the work of each board. The board completing the county shall certify the returns as required by law.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and two (2) clerks" in two places in subsection (1) and in one place in subsection (2).

23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions. (1) The election judges and clerks shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or more before the commissioners meeting which precedes the next primary election.

(2) The list of each party may contain twice the number of election judges and clerks to be appointed and not more than a majority may be appointed from one (1) political party for each precinct. Judges so appointed must be a member of the political party they are to represent.

(3) The commissioners may appoint election judges and clerks in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman.

History: En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973.

Amendments

The 1971 amendment inserted "and clerks" in subsections (1), (2), and (3); and substituted "may" for "must" after "The list of each party" in subsection (2).

The 1973 amendment added the second sentence to subsection (2).

23-3203. Judges and clerks to serve until others appointed. (1) The election judges and clerks continue to be judges of all elections held in their precincts until other judges and clerks are appointed.

(2) The commissioners shall fill vacancies which occur in the office of election judge or clerk.

History: En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971.

Amendments

The 1971 amendment deleted former subsection (1) reading, "The election judges may appoint two (2) persons having the same qualifications as themselves to act as clerks of the election who serve at the pleasure of the judges"; redesignated former subsections (2) and (3) as subsections (1) and (2); inserted "and clerks" in two places in subsection (1); and added "or clerk" in subsection (2).

23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election. (1) The registrar must notify the election judges and clerks in writing of their appointment.

(2) Twenty (20) days or more before any general election, the registrar shall mail two (2) notices of the election to the election judges. The notices shall be in the form prescribed by the secretary of state.

(3) Ten (10) days or more prior to the election, the election judges shall post one (1) notice at the place where the election will be held and the other in one (1) of the most public places in the precinct.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and clerks" in subsection (1).

23-3205. Oath of judges and clerks—may administer oaths. (1) Before votes are cast, the election judges and clerks must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other and to the clerks.

(2) Any election judge or a clerk may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969.

23-3206. Instruction of judges and clerks. (1) Before each election, all election judges and clerks who do not possess a certificate of instruc-

tion shall be instructed by a person named by the commissioners in the powers, duties, and liabilities of election judges.

(2) The instructor shall call meetings as necessary.

(a) The election judges and clerks shall attend each meeting and receive at least two (2) hours of instruction.

(b) Each election judge and clerk shall receive compensation fixed by the commissioners at the prevailing federal minimum wage for instruction to be paid at the same time and in the same manner as for services on election day.

(3) Each judge and clerk shall receive a certificate of completion from the instructor upon completion of the course. Each certificate is valid for a period of two (2) years.

(4) No person shall serve as election judge or clerk without a valid certificate. However, this does not apply to persons filling vacancies in emergencies.

(5) Notice of place and time of instruction must be given to the county chairmen of the two (2) major political parties by the commissioners.

History: En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and clerks" in subdivisions (1), (2) (a), (2) (b), and (3); and inserted "or clerk" in subsection (4).

23-3207. Compensation of judges and clerks. The compensation of election judges and clerks shall be fixed by the commissioners at the prevailing federal minimum wage and be paid from county funds. The commissioners shall audit the accounts.

History: En. Sec. 55, Ch. 368, L. 1969.

CHAPTER 33

PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

Section

23-3301. Date of primary election—candidates to be selected.
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23-3321. Declining nomination—vacancies before and after primary.

23-3301. Date of primary election—candidates to be selected. The primary election shall be held on the first Tuesday in June preceding any general election to select candidates for:

(1) United States senators and representatives in Congress;

(2) Other elective state, district, and county officers;

(3) Delegates to any constitutional convention who will be chosen at the ensuing general election;

(4) County central committeemen and committeewomen by the political parties.

History: En. Sec. 56, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutional Convention

Legislative assembly was not empowered to provide for nomination and election of delegates to constitutional convention under article XIX, sec. 8 of the 1889 constitution solely by nonpartisan means, since this would be a substantial change from manner of election and nomination provided for under this chapter. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

23-3302. Primaries in cities over certain size—procedure. In cities having a population of three thousand five hundred (3,500) or more as shown by the most recent federal or state census:

(1) The nomination of candidates by primary election for city offices shall be subject to the provisions of this chapter;

(2) Political parties shall file declarations of nominations for city offices with the city clerk;

(3) The duties of the city clerk are the same as the registrar in conducting the primary elections, and the city clerk shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;

(4) On the fourteenth day preceding a city election, the cities shall hold primary elections;

(5) If no declarations are filed forty (40) days or more before the primary election, no primary election shall be held and the city clerk shall certify to the registrar thirty-five (35) days or more before the date of the primary election that no petitions have been filed;

(6) The council shall;

(a) establish city voting precincts and wards,

(b) appoint city judges and clerks of elections and other officers necessary for the election,

(c) perform other necessary duties in the same manner prescribed for city elections.

History: En. Sec. 57, Ch. 368, L. 1969; amd. Sec. 2, Ch. 343, L. 1971.

Amendments

The 1971 amendment made a minor change in punctuation.

23-3303. Notices of election. (1) Twenty (20) days before any primary election, the registrar shall prepare printed notices of the election and mail two (2) notices to each judge of election.

(2) Each judge and clerk shall immediately post the notices in public places in their precinct.

(3) Notices shall be in the form, and contain information, as prescribed by the secretary of state.

History: En. Sec. 58, Ch. 368, L. 1969.

23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot. (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk. Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.

(2) Each candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars ($1,000) or less per annum, ten dollars ($10), except candidates for the legislature must pay fifteen dollars ($15);

(b) For offices having a salary of more than one thousand dollars ($1,000) per annum, one per cent (1%) of the total annual salary;

(c) For the offices of county commissioner;

(i) in counties of the first class, forty dollars ($40),

(ii) in counties of the second class, thirty-five dollars ($35),

(iii) in counties of the third class, thirty dollars ($30),

(iv) in counties of the fourth class, twenty-five dollars ($25),

(v) in counties of other classes, ten dollars ($10),

(d) For offices in which compensation is paid in fees, five dollars ($5);

(c) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:

(a) Files with the secretary of state, registrar, or city clerk, at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination;

(b) Pays the required filing fee,

(c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.

(7) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973.

Amendments

The 1973 amendment added the second sentence to subdivision (1); substituted "legislature" for "legislative assembly" in subdivision (5) (a); deleted "or lieutenant governor" from subdivision (5) (a); and made a minor change in phraseology.

DECISIONS UNDER FORMER LAW

Time for Filing Acceptance by Write-in Candidate

Under prior statute requiring write-in candidate to file within ten days after "election," the term "election" meant the day of election and not the day on which the canvass of the ballots was completed, hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election official ballot. State ex rel. Wulf v. McGrath, 111 M 96, 97, 106 P 2d 183.

23-3305. Deadline for filing nominating declarations — persons with whom filed. Nominating declarations shall be filed not later than 5 p. m. forty (40) days before the date of the primary election. Declarations for nomination to an office filled by election throughout the state, as judge of a district court, to an office filled by election in more than one (1) county, or as a member of the legislative assembly shall be filed with the secretary of state. Declarations for nomination to an office filled by election in one (1) county, or district or city shall be filed with the registrar or city clerk.

History: En. Sec. 60, Ch. 368, L. 1969.

23-3306. Register of candidates—public record—disposition of poll-books, tally sheets, ballots, etc. (1) The secretary of state, registrar, and city clerk shall keep a "Register of Candidates for Nomination at the Primary Nominating Election." The entries in the register shall contain on separate pages for each political party showing:

(a) The title of the office sought, and the name and residence of each candidate;

(b) The name of his political party;

(c) The date of receiving the declaration for nomination signed by the candidate;

(d) Other information as may aid in arranging the official ballot.

(2) Immediately after the canvass of votes of the primary election, the officer shall enter in the register the date of entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

(3) When filed, the registers, declarations of nomination, letters and notices, and other documents required by law are public records and open to inspection under proper regulation. Certified copies shall be available upon payment of the fee.

(4) The registrar shall keep all pollbooks, tally sheets, ballots, ballot stubs, and other documents for one (1) year, and then he shall destroy them.

History: En. Sec. 61, Ch. 368, L. 1969.

23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk. (1) Not more than forty (40) days and not less than thirty-two (32) days before the date of the primary election, the secretary of state shall:

(a) Arrange all names and information concerning candidates contained in the valid nominating declarations;

(b) Certify the arrangement under state seal, file it in his office, and transmit a duplicate by registered mail to each registrar;

(c) Post a duplicate in a conspicuous place in his office until after the primary election.

(2) Not more than thirty (30) days, and not less than twenty (20) days before the date of the primary election, the registrar or city clerk shall:

(a) Arrange, as required by law, the names and other information concerning the candidates and parties named in the valid nominating declarations which have been certified to him or filed with him;

(b) Certify the arrangement, file it in his office, and post a duplicate in a conspicuous place in his office until after the primary;

(c) Have colored sample ballots and the official ballots printed as required by law.

History: En. Sec. 62, Ch. 368, L. 1969.

23-3308. Ballots, how arranged and voted. (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. The names of the candidates for governor and lieutenant governor shall be arranged by the surname of the candidate for governor. When two (2) or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical;

(c) If an elector writes the name of a person upon a ballot, and the person's name appears as a candidate upon another ballot, the ballot shall count for the person only as a candidate of the party upon whose ticket his name is written;

(d) If a person is nominated upon more than one (1) ticket, not later than ten (10) days after the election he shall file written notification with the secretary of state, registrar, or city clerk the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed;

(e) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name shall not be printed upon any ballot with party designation;

(f) This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate shall have his name printed on more than one (1) ticket.

(3) Ballots shall be printed on white paper in the form of the Australian ballot and the candidates of each party shall be printed on a separate ticket.

(4) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen;

(a) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box;

(b) Immediately after the recount period, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973.

Amendments

The 1973 amendment inserted the second sentence in subdivision (2).

23-3309. Official and sample ballots—preparation and number. (1) Ballots equal to the number of voters entitled to vote in the primary shall be printed and furnished to each election precinct.

(2) If a political party desires sample ballots its political committee may order them from the registrar or city clerk and pay the costs of printing. The registrar or city clerk shall order delivery in writing of the sample ballots and no sample ballots shall be printed without an order from the registrar or city clerk.

(3) Sample ballots shall be duplicates of the official ballot, but shall not be printed on white paper, shall not have the same margins, and shall not have perforated stubs.

History: En. Sec. 64, Ch. 368, L. 1969.

23-3310. Election clerks' and judges' duties upon closing of polls. Immediately after the polls are closed at a primary election, the election clerks and judges shall open the ballot boxes and:

(1) Count the ballots cast by each political party and fasten the ballots cast for each political party into separate files,

(2) Take the tally sheets provided by the registrar and count the ballots for each political party,

(3) Certify the number of votes cast for each candidate for each office,

(4) Place the counted ballots in the box.

History: En. Sec. 65, Ch. 368, L. 1969.

23-3311. Tally sheets—keeping and announcing the tally—statement. (1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

(2) Tally sheets shall show:

(a) The number and name of each person voted for;

(b) Office for nomination to which each person was voted for;

(c) Total number of votes cast for each candidate for nomination.

(3) The election clerks and judges shall audibly announce the tally or count, and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.

(4) The election clerks shall in ink:

(a) Keep tally upon the prescribed tally sheet of each political party;

(b) Total the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";

(c) Prepare the certificate required by subsection (3) of this section;

(d) Immediately upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him;

(e) If the chairman and judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.

(5) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immedi-

ately post it in a conspicuous place outside of the polls. The statement shall remain posted for ten (10) days.

History: En. Sec. 66, Ch. 368, L. 1969.

23-3312. Duties of election clerks and judges after canvassing votes—seal. (1) Immediately after canvassing votes, the election clerks and judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

(a) Enclose the tally sheets in separate envelopes and securely seal them;

(b) Enclose the precinct registers in separate envelopes and securely seal them;

(c) Enclose all ballots fastened together and in separate envelopes and securely seal them;

(d) Specify in ink the contents, and address each package to the registrar of the county in which the election precinct is situated;

(e) Mark the sealed ballot packages on the outside showing what numbers are contained, but once sealed they are not to be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two (2) ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or the canvassers making the abstracts of the votes shall not break the seal, nor shall anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election.

History: En. Sec. 67, Ch. 368, L. 1969.

23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates. (1) At 8 a.m. on the third day after the close of any primary election, or at 8 a. m. on a day sooner if all the returns are in, the registrar, taking two (2) assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for governor, lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, United States senators, United States representatives, judges of the district court, and members of the legislative assembly, shall be on one (1) sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by section 23-3314.

(3) Abstracts of votes for county and precinct offices shall be placed on separate sheets for each political party, and the registrar shall certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one (1) party, the registrar shall notify the affected persons to come to his office at a time

set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nominations.

(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office.

History: En. Sec. 68, Ch. 368, L. 1969.

23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie. (1) The registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state.

(2) The secretary of state shall, in the presence of the governor and the state treasurer, proceed not later than fifteen (15) days after the date of the primary election to canvass the votes given for nomination for governor and lieutenant governor, United States senator, United States representative, attorney general, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county.

(3) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party.

(4) When a tie exists between two (2) or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied, to attend in person or by attorney, at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person.

History: En. Sec. 69, Ch. 368, L. 1969; amd. Sec. 3, Ch. 28, L. 1973.

Amendments

The 1973 amendment inserted "and lieutenant governor" after "governor" in subdivision (2); and deleted "lieutenant governor" later in subdivision (2).

23-3315. Error in ballot or other wrongful or neglectful act. (1) Whenever it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) That an error or omission has occurred, or is about to occur, in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) That any error has been, or is about to be, committed in the printing of the ballots;

(c) That the name of any person or any other matter has been, or is about to be, wrongfully placed upon the ballots;

(d) That any wrongful act has been performed by any judge or clerk of the primary election, registrar, canvassing board or member, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons has occurred or is about to occur; the court shall require by order the officer or person charged with the act or neglect to perform his duties required by law or show cause why the order should not issue.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by this act shall, without derogation of any other right or remedy, be entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided.

History: En. Sec. 70, Ch. 368, L. 1969.

23-3316. Contest—notice—hearing—how tried and decided—certificate. (1) Five (5) days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, township, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice three (3) days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969.

Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

Cross-Reference

Application of Montana Rules of Civil

23-3317. Penalty for violation of act—officials—candidates. (1) If an election clerk or judge of a primary election, or other officer or persons on whom a duty is enjoined, willfully neglects that duty or commits any corrupt act in the discharge of his duty, he is guilty of a violation of this act. Upon conviction, he shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, imprisoned in the county jail for not less than three (3) months nor more than one

(1) year, or fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(2) If a candidate for nomination is guilty of any act which is wrongful or unlawful, or acts at the primary which would be sufficient to cause his removal from office if committed at the regular general election, he shall, upon conviction, be removed from office in the same manner as though the act had been committed at a regular general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act at the election at which he was elected to his office.

History: En. Sec. 77, Ch. 368, L. 1969.

23-3318. Certificates of nomination by individuals or parties not appearing on preceding general election ballot—requisites—applicability. Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding general election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

(a) The name of a candidate for the office to be filled;

(b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding general election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding general election.

(5) Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the primary election as established by law. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state 90 days prior to the date of the general election. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973.

Amendments

The 1971 amendment added the second sentence of paragraph (5), relating to

the filing of certificates of nomination by candidates for municipal offices.

The 1973 amendment inserted "general" before "election" throughout the section; substituted "Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the primary election as established by law" for "The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election" in subsection (5); and inserted "90 days prior to the date of the general election" at the end of the first sentence in subsection (6).

Effective Date

Section 2 of Ch. 59, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 24, 1971.

DECISIONS UNDER FORMER LAW

Error in Certificate

Under the law governing conventions and primary meetings, an error in the party name on the certificate of nomination rendered it void. State ex rel. Scharnikow v. Hogan, 24 M 397, 401, 62 P 683.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient. State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

Party Candidate

It is by means of the certificate of nomination that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or organization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 M 502, 510, 511, 46 P 370.

Time of Filing

Prior law requiring certificates of nomination to be filed with the secretary of state not more than sixty nor less than thirty days before election was mandatory and a certificate of original nominations made at a party convention could not be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

23-3318.1. Determination of number of signatures required in census divisions. In the case of candidates for the Montana House of Representatives, the Montana Senate, and the Montana Constitutional Convention who may be required to run in districts embracing census enumerator divisions located in more than one county, the secretary of state shall, for those counties split along census enumerator divisions, determine the number of signatures needed for nominating petitions of independent candidates in such districts. The determination shall be based on the most recent federal census population figures for the district.

History: En. Sec. 1, Ch. 6, 2nd Ex. L. 1971.

Title of Act

An act to authorize the secretary of state to determine the number of signatures needed for nominating petitions of independent candidates; and providing an effective date.

Effective Date

Section 2 of Ch. 6, 2nd Ex. Laws 1971 read "This act is effective on its passage and approval and shall remain in effect until such time as the procedures in section 23-3318, R. C. M. 1947, can be followed."

23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate. (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for one (1) year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five (45) days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him.

(3) Each election board shall transmit to the secretary of state a statement of the number of votes cast for a person as the candidate for the independent body by which he was nominated.

History: En. Sec. 79, Ch. 368, L. 1969.

23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate. (1) Every political party which received three per cent (3%) or more of the total vote cast for governor at the next preceding general election in the county, district, or state for which nominations are proposed to be made, shall nominate its candidate for public office in the county, district or state under this act.

(2) Every political party, and its regularly nominated candidates, members and officers, has the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(3) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

(4) The names of candidates for public office nominated under this act shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for public office in the same manner as the names of the candidates nominated by other methods are required to be printed on the official ballots.

(5) Any political party that did not receive three per cent (3%) or more of the total vote cast for governor, as provided in subsection (1) of this section, and any new political party about to be formed, may make nominations for public office as provided in section 23-3318.

History: En. Sec. 80, Ch. 368, L. 1969.

Presidential Electors Are Candidates for Public Office

Candidates for presidential electors were candidates for public office, within the meaning of prior section. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Use of Term "Independent"

Assuming (but not deciding) that an existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from employing that term in designating the character of his candidacy for the same office, and section prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361, 230 P 366.

23-3321. Declining nomination—vacancies before and after primary. (1) Twenty (20) days or more before the election, a person nominated for public office may decline the nomination by a writing sent to the office with whom his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in any district however constituted, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county or district by the county central committees of the county or district of the affected political party.

(b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state accompanied by the proper filing fee he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

(4) A vacancy in the position of candidate for governor or lieutenant governor shall not affect the candidacy of the other joint candidate.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973.

Amendments

The 1971 amendment substituted "any district however constituted" for "a multi-county district" in subsection (3); inserted "or district" after "from each county" in subdivision (3) (a); inserted "of the county or district" after "central committees" in subdivision (3) (a); and inserted "accompanied by the proper filing fee" in subdivision (3) (c).

The 1973 amendment added subdivision (4).

Cross-Reference

Inducement to accept or decline nomination, sec. 94-1456.

Defective Proceedings

An election will not be declared void by reason of nonprejudicial defects in the manner in which nomination was declined where question was raised after election. Stackpole v. Hallahan, 16 M 40, 51, 40 P 80.

Write-in Candidates

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election where the officer-elect died after election and before

induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

Time for Filling Vacancies

When a convention has made a nomination, and has authorized its committee to fill any vacancy that may occur, the filling of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Scharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

CHAPTER 34

POLITICAL PARTIES, COMMITTEEMEN AND COMMITTEES

Section
23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.
23-3402. Committeemen as party representative—county and city central committees—term—vacancy.
23-3403. Committees' powers—state central committee to appoint county central committee where none exists.
23-3404. Committees to fill vacancies among nominees under certain circumstances.
23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.
23-3406. Powers of parties.
23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.

23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket. (1) Each political party shall elect at each primary election one (1) man and one (1) woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969.

23-3402. Committeemen as party representative—county and city central committees—term—vacancy. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of two (2) years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969.

23-3403. Committees' powers—state central committee to appoint county central committee where none exists. (1) The county and city central committee may:

(a) Make rules for the government of its political party in each county, not inconsistent with any of the provisions of this act nor the rules of its state political party;

(b) Elect two (2) county members of the state central committee, one (1) shall be a man and one (1) shall be a woman; elect the members of the congressional committee; and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969.

23-3404. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969.

Write-in Candidate

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election, where the officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman or first vice-chairman shall be a woman. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date

of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy shall be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973.

Amendments

The 1973 amendment deleted "enclosing a blank proxy," after "a copy of the call" in the first sentence of subsection (3); inserted "If party rules permit the use of a proxy," at the beginning of the second sentence of subsection (3); deleted "and the appointed proxy" after "committeeman" in subsection (5); and made a minor change in style.

23-3406. Powers of parties. (1) Each political party shall have power to:

(a) Make its own rules and regulations;

(b) Provide for and select its own offices;

(c) Call conventions and provide for the number and qualification of delegates;

(d) Adopt platforms;

(e) Provide for selection of delegates to national conventions;

(f) Provide for the nomination of presidential electors;

(g) Provide for the selection of national committeemen and women;

(h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;

(i) Perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors. (1) Except as provided in subsection (2) of this section, expenses of county and state conventions shall be paid by the political parties.

(2) Elected delegates and alternates attending state conventions to nominate presidential electors shall be paid eight cents ($.08) per mile for travel to and from the convention paid from the county general fund.

History: En. Sec. 83, Ch. 368, L. 1969.

CHAPTER 35

ELECTION SUPPLIES AND BALLOTS

Section
23-3501. Items to be furnished by commissioners.
23-3502. City clerk to act in city elections.
23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.
23-3504. Forms for election returns.
23-3505. Completion and posting of forms.
23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective.
23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.
23-3508. Printing and distribution of ballots at public expense—uniformity.
23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.
23-3510. Pasters to be printed and distributed where vacancy has been filled—election judges to affix.
23-3511. Arrangement of names—rotation on ballot.
23-3512. Columns and material to be printed on ballot.
23-3513. Order of placement.
23-3514. Blank space and margin.
23-3515. Stub, size and contents.
23-3516. Number of ballots to be provided for each precinct.
23-3517. Short-term and long-term elections for same office—order of offices on ballot.

23-3501. Items to be furnished by commissioners. The commissioners shall:

(1) Furnish pollbooks to each election precinct in a form prescribed by the secretary of state;

(2) Furnish printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns;

(3) Furnish for each polling precinct a ballot box or canvas pouch with a lock and key for the ballots and detached stubs.

History: En. Sec. 84, Ch. 368, L. 1969.

Cross-Reference

County commissioners to furnish pollbooks, sec. 16-1156.

23-3502. City clerk to act in city elections. In city elections, the city clerk shall perform all duties prescribed for registrars in this chapter.

History: En. Sec. 85, Ch. 368, L. 1969.

23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls. Before the opening of the polls, the registrars or city clerks shall:

(1) Deliver the election ballots to the judges of election in each polling place;

(2) Deliver a rubber stamp which contains the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and the name and official designation of the clerk who furnished the ballots.

History: En. Sec. 86, Ch. 368, L. 1969.

23-3504. Forms for election returns. In sending out election supplies to each precinct, the registrars shall send six (6) or more printed forms

with a return envelope to the election judges to be used in sending election returns for public information. The forms shall be in ballot form and have printed on them the names of each candidate and each proposition.

History: En. Sec. 87, Ch. 368, L. 1969.

Transmitting Forms

Forms on which judges of election must summarize the result of the vote are not a part of the election returns and are not required to be transmitted to the clerk in sealed packages. Dubie v. Batani, 97 M 468, 478, 37 P 2d 662.

23-3505. Completion and posting of forms. (1) Immediately after all the ballots are voted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the blanks furnished by the registrars in the preceding section.

(2) The election judges shall immediately post one of the blanks at the polling place, and send a copy by mail to the registrar.

History: En. Sec. 88, Ch. 368, L. 1969.

23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective. Except as otherwise provided in this act:

(1) The registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and associate justices of the supreme court, and judges of the district courts;

(2) An elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark it as provided in section 23-3606. When the ballot is marked in this manner it must be counted the same as though the name is printed upon the ballot and marked by the voter;

(3) Ballots other than those printed by the registrars may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969.

Cross-References

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Separate ballot for bonds and levies, sec. 37-107.

Use of Uniform Ballot Required

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. Harrington v. Crichton, 53 M 388, 391, 164 P 537.

23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk. (1) When the secretary of state has certified to the registrar any question to be submitted to a vote of the people, the registrar must print the ballot in a form which will enable the electors to vote upon the question presented as provided by law.

(2) The registrar must prepare the necessary ballots whenever any question is to be submitted to the electors of any locality, or of the state generally. However, for questions submitted to the electors of a city alone, the city clerk shall prepare the necessary ballot.

History: En. Sec. 90, Ch. 368, L. 1969.

23-3508. Printing and distribution of ballots at public expense—uniformity. (1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.

(2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

(3) The expense of printing and delivering ballots in city elections is a charge upon the city in which the election is held.

(4) All official ballots must be uniform in size and printing. This involves:

(a) Uniformity in the type of ink used, which must be black, size of paper, type of white paper and arrangement of the paper, and the names of candidates printed upon the ballots shall be in type of the same size and character;

(b) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot;

(c) The ballots must contain the name of every candidate whose nomination is certified under law for a special office and no other names except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided in section 23-4301.

History: En. Sec. 91, Ch. 368, L. 1969.

23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party. (1) Candidates' names shall be printed in one place on the ballot with the name of the party or political organization, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates for chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designation."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, his name shall appear under the party with whom his nominating declaration was first filed.

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971.

Amendments

The 1971 amendment substituted "his name shall appear under the party with whom his nominating declaration was first filed" for "no party designation shall be placed opposite his name" at the end of the second sentence of subsection (3).

23-3510. Pasters to be printed and distributed where vacancy has been filled—election judges to affix. (1) If a vacancy occurs after the printing of the ballots but before election, and a person is nominated to fill the vacancy, the officer whose duty it is to have the ballots printed must print pasters containing the name of the new nominee and mail them to the election judges by registered letter.

(2) The election judges shall affix the pasters over the substituted name in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969.

23-3511. Arrangement of names—rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the appropriate title of the respective offices.

(2) The candidates of the two (2) major parties shall appear on the ballot before and above candidates of minor parties and independent candidates.

(3) The parties whose candidates for governor, except independent candidates, received the highest number of votes at the next preceding four (4) general elections shall constitute the two (2) major political parties.

(4) If there is a tie in the number of first or second place votes, the determination shall be made by going back to enough preceding elections to break the tie and no further.

(5) All other candidates shall be designated as either independent candidates or as belonging to minor parties.

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot forms into sets to provide a substantial rotation of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

(e) Candidates of the two (2) major parties shall be rotated so they appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 94, Ch. 368, L. 1969.

23-3512. Columns and material to be printed on ballot. (1) Each ballot shall contain three (3) categories with at least one (1) column for each category.

(2) At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the legislative assembly, and the list shall progressively continue to the top of the second column.

(3) Next shall be the words "COUNTY AND TOWNSHIP," in large boldface type and beneath the heading all candidates for county and township offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in boldface type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three (3) categories as nearly as possible.

History: En. Sec. 95, Ch. 368, L. 1969.

23-3513. Order of placement. (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL," shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line, shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor and lieutenant governor;

(e) Secretary of state;

(f) Attorney general;

(g) State treasurer;

(h) State auditor;

(i) Railroad and public service commissioners;

(j) State superintendent of public instruction;

(k) Clerk of the supreme court;

(l) Chief justice of the supreme court;

(m) Associate justices of the supreme court;

(n) District court judges;

(o) State senators, members of the house of representatives.

If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(2) In the column designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed:

(a) Clerk of the district court;

(b) County commissioner;

(c) County clerk and recorder;

(d) Sheriff;

(e) County attorney;

(f) County auditor;

(g) Other offices in the order designated by the registrar.

(3) In the third column constitutional amendments shall be followed by referendum and initiative measures.

History: En. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973.

Amendments

The 1973 amendment combined former subdivisions (1) (d) and (1) (e); and redesignated the succeeding items in subdivision (1).

23-3514. Blank space and margin. (1) Below the names of candidates for each office there must be enough blank spaces to contain as many written names of candidates as there are persons to be elected.

(2) There must be a margin on each side of at least one-half (½) inch in width, and a reasonable space between the names, so that the voter may clearly indicate the candidate for whom he wishes to cast his ballot.

History: En. Sec. 97, Ch. 368, L. 1969.

23-3515. Stub, size and contents. (1) The ballot shall be printed on the same leaf with a stub, and separated by a perforated stub.

(2) The stub shall extend the entire width of the ballot, and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the names of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote, and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment, or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the back of the stub shall be printed or stamped by the registrar or other officer, the consecutive number of the ballot, beginning with number one (1) and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969.

23-3516. Number of ballots to be provided for each precinct. (1) The registrar must provide each election precinct with sufficient ballots for the electors registered plus sufficient copies to cover destroyed ballots.

(2) The registrar shall keep a record in his office, showing the exact number of ballots that are delivered to the election judges of each precinct.

(3) In city elections the city clerk shall provide necessary ballots.

History: En. Sec. 99, Ch. 368, L. 1969.

23-3517. Short-term and long-term elections for same office—order of offices on ballot. (1) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

(2) Above each group of candidates for each office shall be printed the words designating the particular office in boldface capital letters and directly underneath the words, "VOTE FOR," followed by the number to be elected to such office.

(3) The ballot shall be in a form prescribed by the secretary of state.

History: En. Sec. 100, Ch. 368, L. 1969.

CHAPTER 36

CONDUCT OF ELECTIONS—THE POLLS—VOTING AND BALLOTS

Section
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23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots. (1) The registrar shall print on cards instructions to electors on how to vote.

(2) He shall furnish six (6) cards to the election judges in each precinct and one (1) additional card for each fifty (50) registered electors or fractional part of fifty (50) at the same time ballots are furnished.

(3) The election judges shall post at least one (1) card in each compartment provided for the preparation of ballots, and not less than three (3) of the cards elsewhere about the polling place.

(4) The cards shall contain instructions in bold large type:

(a) On how to obtain ballots for voting;

(b) On how to prepare ballots for deposit in the ballot box;

(c) On how to obtain a new ballot in place of one spoiled by accident;

(d) A copy of sections 23-4707, 23-4711, 23-4712, 23-4713, 23-4714, and 23-4715, R.C.M. 1947.

(5) Official ballots provided for in chapter 35 of this act shall be posted in each booth or compartment and in three (3) conspicuous places about the polling place.

History: En. Sec. 101, Ch. 368, L. 1969.

Compiler's Notes

Sections 23-4707, 23-4711, 23-4712, 23-4713, 23-4714, and 23-4715, referred to in subdivision (4) (d), were originally numbered 94-1407, 94-1411, 94-1412, 94-1413, 94-1414, and 94-1415. For text, see bound Volume Eight under the latter numbers.

The compiler has substituted the reference to "chapter 35" for a reference to "chapter 6" in subsection (5).

23-3602. Proclamation prior to opening and closing polls. Before the polls are opened or closed that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969.

23-3603. Delivery of official ballots to elector. (1) The election judges must designate two (2) of their number to deliver ballots to electors.

(2) Before delivery, the election judges shall stamp the words "official ballot" on the back and near the top of the ballot. They shall also stamp other words required by section 23-3503.

(3) The election clerks shall enter on the poll lists the name of the elector and the number of the stub attached to the ballot given him.

(4) Each elector shall receive one (1) ballot from the election judges.

History: En. Sec. 103, Ch. 368, L. 1969.

Stamping of Official Ballot

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. Harrington v. Crichton, 53 M 388, 164 P 537.

23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time. (1) All officers who designate polling places shall:

(a) Provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) Furnish the booths adequately to enable the elector to prepare his ballot;

(c) Furnish at least one (1) booth for every fifty (50) electors registered in the precinct.

(2) No more than one (1) person may occupy a booth at one (1) time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 368, L. 1969.

23-3605. Prohibited conduct. (1) An election officer shall not do any electioneering on election day.

(2) A person shall not do any electioneering on election day, within any polling place, in any building in which an election is being held, or within two hundred (200) feet of the building where the polling place is located.

(3) A person shall not obstruct the entries to a polling place.

(4) An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place.

(5) A person shall not remove a ballot from the polling place before the closing of the polls.

(6) A person shall not show the contents of his ballot to any other person after it is marked.

(7) A person shall not solicit the elector to show the contents of his ballot; nor shall any person, except the election judge, receive from any elector a ballot prepared for voting.

(8) An elector shall not receive a ballot from any other person than one of the election judges, nor shall any person other than an election judge deliver a ballot to an elector.

(9) An elector shall not vote any ballot except one received from the election judges.

(10) An elector shall not place any mark upon his ballot by which it may be identified as the one voted by him.

(11) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to the election judges.

History: En. Sec. 105, Ch. 368, L. 1969.

Cross-References

Disclosing contents of ballot after marking, penalty, 94-1414.

Electioneering by election officials, penalty, 94-1413.

Solicitation of votes on election day, sec. 94-1453.

23-3606. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment, or other question to be submitted to the vote of the people, he shall mark an "X" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote, and vote for that person by marking an "X" before the name.

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen, and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote, and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot, and remove the stub in sight of the elector depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 106, Ch. 368, L. 1969.

Deposit of Ballot

Act of voting is not completed until the ballot is deposited in the ballot box. Goodell v. Judith Basin County, 70 M 222, 233, 224 P 1110.

Error by Election Officer

A ballot properly marked, but from which the stub has not been detached by the ballot judge, should be counted; a voter is not to be disfranchised by the errors or wrongful acts of election officers. Carwile v. Jones, 38 M 590, 599, 101 P 153.

Marking of Ballot

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were

drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, nor any, compliance with the provisions of predecessor section. Carwile v. Jones, 38 M 590, 595, 101 P 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. Carwile v. Jones, 38 M 590, 595, 101 P 153.

Where the crossmark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of prior section relative to placing the mark before the name. Carwile v. Jones, 38 M 590, 595, 101 P 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within the square, a defect in the mark is not sufficient to vitiate the ballot. Carwile v. Jones, 38 M 590, 595, 101 P 153, explained in 109 M 390, 393, 396, 96 P 2d 922.

Statutory provision that a ballot should be marked by an "X" in the square is directory and not mandatory, and in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X" should have been counted for contestant, there being nothing to indicate an attempt to mark the ballot for identification purposes. Peterson v. Billings, 109 M 390, 395, 96 P 2d 922.

Voting an Affirmative Act

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-3607. No person except election judge to put ballot or other object in a ballot box—penalty. No person, except an election judge shall put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box. A person violating this section is guilty of a misdemeanor. An election judge who knowingly permits a violation of this act is guilty of a felony.

History: En. Sec. 107, Ch. 368, L. 1969.

23-3608. Putting ballot in box. If the name of an elector appears in the official register of the precinct, or if the person offering to vote produces a proper registry certificate and his vote is not rejected upon a challenge, the election judge must immediately and publicly in the presence of all the judges, place the ballot in the ballot box without opening or examining it.

History: En. Sec. 108, Ch. 368, L. 1969.

23-3609. Judges may aid disabled elector. (1) The election judges shall aid an elector, who because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The elector shall be assisted by two (2) judges who represent different parties. The disabled elector may request that a qualified elector he designates also aid him in voting. The election judges must certify on the official

register opposite the disabled elector's name that the ballot was marked with their assistance and the name of any other elector designated. Neither the judges nor a person who aided the elector may reveal information regarding the ballot.

(3) The election judges shall require the declaration of disability by the elector under oath. They are authorized to administer the oath.

(4) No elector, other than the one who is unable to vote, may divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

(5) Instead of assistance, as provided in subsection (2) of this section, the elector may request the assistance of any qualified elector whom he designates to the judges to aid him in the marking of his ballot, and the judges must certify on the official register opposite the name of such disabled elector that it was so marked with their assistance.

History: En. Sec. 109, Ch. 368, L. 1969.

Evidence

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by law, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. Lane v. Bailey, 29 M 548, 560, 75 P 191.

Need Not Certify Reason for Assistance

A ballot bearing the endorsement: "Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. Carwile v. Jones, 38 M 590, 599, 101 P 153.

23-3610. Marking precinct register book before elector votes—procedure. (1) The election judges at every primary, general or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two (2) electors who shall make an affidavit before the election judges, or one (1) of them, in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges, and returned to the registrar with the returns of the election. One (1) of the judges shall write the elector's name, note the fact of his inability to sign, and the names of the two (2) electors.

(5) If the elector fails or refuses to sign his name, and if unable to write fails to procure two (2) electors who will take the oath required, he shall not be allowed to vote.

(6) Immediately after the canvass of the returns, the election judges shall deliver to the registrar the official register, sealed, with the election returns and pollbook which have been used for the election.

(7) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook.

History: En. Sec. 110, Ch. 368, L. 1969; amd. Sec. 3, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "primary" in subsection (1).

23-3611. Grounds of challenge. A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) That he is not the person whose name appears on the register or checklist;

(2) That he has been adjudicated insane or is confined to a state institution;

(3) That he has voted before that day;

(4) That he has been convicted of a felony and has not been pardoned.

History: En. Sec. 111, Ch. 368, L. 1969.

Cross-References

Challenges at nominating elections, sec. 94-1446.

23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony. (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before that day, the judges shall administer this oath: "You do swear (or affirm) that you have not before voted this day."

(3) If the challenge is on the ground that the person has been convicted of a felony, the judges shall administer the following oath: "You do swear (or affirm) that you have not been convicted of a felony."

History: En. Sec. 112, Ch. 368, L. 1969.

23-3613. Challenges, how determined. (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered, unless the conviction is proved by producing an authenticated copy of the record, or by oral testimony of two (2) witnesses.

(a) If a person convicted of a felony states he was pardoned, he must exhibit his pardon or certified copy to the election judges.

(b) If the pardon is found sufficient, the election judges shall administer this oath: "You do swear (or affirm) that you have not been convicted of any felony other than that for which a pardon is now exhibited."

(c) After taking the oath, the person must be allowed to vote if otherwise qualified, unless a conviction of some other felony is proved.

History: En. Sec. 113, Ch. 368, L. 1969.

23-3614. If a person refuses to be sworn, vote to be rejected. If a person challenged refuses to take the oath tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he shall not be allowed to vote.

History: En. Sec. 114, Ch. 368, L. 1969.

23-3615. Trial of challenges. Challenges for causes other than those specified in this chapter must be tried and determined by the election judges at the time of the challenge.

History: En. Sec. 115, Ch. 368, L. 1969.

23-3616. Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot shall, without examination, be destroyed by the election judges in the presence of the person offering the challenge. If determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 116, Ch. 368, L. 1969.

23-3617. List of challenges to be kept. The election judges shall require each election clerk to keep a list showing:

(1) The names of all persons challenged;

(2) The grounds of each challenge;

(3) The determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969.

23-3618. Poll watchers—announcement of voter's name. The election judges shall permit one (1) poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with election procedures. At the time that each elector signs his name, one (1) of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote-counting procedures of the judges and all entries of the results of the elections.

History: En. Sec. 118, Ch. 368, L. 1969.

CHAPTER 37

ABSENTEE VOTING AND REGISTRATION

Section

23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
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23-3703. Application of absentee or physically incapacitated person for ballot.
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23-3706. Mailing ballot to elector—affidavit—electors in the United States service.
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23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots.
23-3712. Voting before election day by prospective absentee or physically incapacitated elector.
23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.
23-3714. Elector whose absentee ballot has been rejected as defective may vote in person.
23-3715. Opening of envelopes after deposit.
23-3716. Voting machines—canvass of votes.
23-3717. False swearing perjury—official misconduct a misdemeanor.
23-3718. "Elector in the United States service" defined.
23-3719. Registration of absent electors in United States service.
23-3720. Oath for elector in United States service.
23-3721. Classification of federal post card application.
23-3722. Method of registration of voter absent from county.
23-3723. Registration card mailed upon application.
23-3724. Registration of electors whose United States service or employment has terminated.

23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls. A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in sections 23-3701 through 23-3723.

History: En. Sec. 119, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior Absent Voters Law was valid enactment and did not violate section 2, article IX of the state constitution, which provides that an elector "shall have resided in the state one year immediately preceding this election at which he offers to vote." Goodell v. Judith Basin County, 70 M 222, 227, 224 P 1110.

23-3702. Forms and rules for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for school district elections and may make necessary rules to carry out the purpose of this chapter as it pertains to school districts.

History: En. Sec. 120, Ch. 368, L. 1969.

23-3703. Application of absentee or physically incapacitated person for ballot. During a period beginning forty-five (45) days before the day of an election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot.

History: En. Sec. 121, Ch. 368, L. 1969.

23-3704. Form of application — affidavit — manner. (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application and swear to it before an officer authorized to administer oaths. The application is not complete without this affidavit.

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant, addressed to the registrar of the applicant's residence.

History: En. Sec. 122, Ch. 368, L. 1969.

23-3705. Transmission of application to registrar—delivery of ballot. (1) The elector shall forward the application by mail or deliver it in person to the registrar.

(2) The registrar shall compare the signature on the application with the applicant's signature on the registration card. If convinced the person making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

History: En. Sec. 123, Ch. 368, L. 1969.

23-3706. Mailing ballot to elector—affidavit—electors in the United States service. (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed affidavit in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter (¼) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter (¼) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subparagraph (5) of this section shall include a procedure to be followed by absentee voters, such as notation of the facts on the back of the envelope duly signed by the voter and witnessing officer, in instances of adhesion of the balloting material.

(4) The return address shall be self-addressed to the registrar or city clerk.

(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service. Instructions shall include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971.

Amendments

The 1971 amendment added the fifth and sixth sentences to subsection (3); and added the second sentence to subsection (5).

Improper Delivery

Absent voter's ballot delivered by county clerk not to electors personally or by mail, but to one engaged in procuring electors to apply therefor and request that such ballots be delivered to such person, were void and could not be voted at ensuing election. State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 895.

23-3707. Marking and swearing to ballot by elector. (1) The elector shall complete the affidavit before an officer authorized by law at the place of execution to administer oaths.

(2) The elector shall mark each ballot in the presence of the officer only, in a manner so the officer cannot see the vote.

(3) The ballot shall be folded by the elector to conceal the vote in the presence of the officer and the elector shall, in the officer's presence, place it in the envelope and seal it.

(4) The officer shall sign at the end of the certificate and affidavit.

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district.

History: En. Sec. 125, Ch. 368, L. 1969.

23-3708. Disposition of marked ballot upon receipt by registrar or clerk. (1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application and seal it.

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him.

History: En. Sec. 126, Ch. 368, L. 1969.

23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the registrar or clerk shall deliver the larger envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges, but prior to the close of the polls, the registrar or clerk shall immediately deliver the larger envelopes to the judges.

(3) If absentee ballots are received by the registrar or clerk for which application was not received prior to twelve (12) noon on the day preceding an election, or received after the close of the polls, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected." Absentee ballots so endorsed shall be delivered to the election judges of the precinct or retained by the registrar or clerk if the judges have adjourned and shall be rejected.

(4) If an elector votes absentee ballot and dies between the time of balloting and election day, his ballot will not count.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "but prior to the close of the polls" in subsection (2); deleted "by mail postage prepaid" after "larger envelopes" in subsection (2); inserted "or received after the close of the polls" in the first sentence of subsection

(3); inserted "or retained by the registrar or clerk if the judges have adjourned" in the second sentence of subsection (3); and made minor changes in phraseology and style.

23-3710. Registrar or clerk to keep record of ballots and issue certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number one (1) and following consecutively, according to the number of applications for absentee ballots.

(2) The registrar, city clerk, or school district clerk shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The registrar, city clerk, or school district clerk shall deliver to the election judges to whom the ballots are delivered a certificate stating the number of absentee ballots delivered as well as those marked before him, and the names of the voters to whom such ballots are delivered, or by whom they have been marked if marked before him.

History: En. Sec. 128, Ch. 368, L. 1969.

23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots. (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the names of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot.

(3) Any absentee ballots which have been rejected shall be placed with the voter's application and the absent or physically incapacitated voter's envelope furnished by the registrar or city clerk.

(a) This envelope shall be sealed and endorsed by the words, "rejected absentee ballots," numbered ....., and shall put on it the number of the absentee ballots given according to the registrar's or city clerk's certificates.

(b) There shall be a separate enclosing envelope for the absentee ballots rejected, and the envelopes shall be placed in an envelope together with other ballots, and shall not be opened without a court order.

History: En. Sec. 129, Ch. 368, L. 1969.

23-3712. Voting before election day by prospective absentee or physically incapacitated elector. (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk, or school district clerk, or some officer authorized to administer oaths and having the official seal.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk, or school district clerk, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969.

23-3713. Envelopes containing ballots—deposit in box and rejection of ballot. (1) While the polls are open on election day, the election judges shall first open the outer envelope only, and compare the signature of the voter on the application and on the affidavit.

(2) If the election judges find that the signatures correspond, that the affidavit is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding it or permitting it to be examined, ascertain whether the stub is still attached and whether the number corresponds to the number in the certificate of the registrar or city clerk.

(3) If so, they shall endorse it the same way that other ballots are endorsed, detach the stub, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affidavit is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector."

(5) The absentee ballot envelope, when it has been voted or rejected, shall be deposited in the ballot box containing the general or party ballots, and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached, or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for .....," filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are) ....."

(8) The election judges shall designate the rejected ballot as "general ballot," if it is a ballot for candidates that are rejected.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. ..... in the certificate on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots.

History: En. Sec. 131, Ch. 368, L. 1969.

Voting Accomplished

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and deposited in the ballot box before the closing of the polls on election day, and this is equally true for absent voters. Maddox v. Board of State Canvassers, 116 M 217, 223, 149 P 2d 112.

23-3714. Elector whose absentee ballot has been rejected as defective may vote in person. If the envelope containing the absentee ballot has

been marked "rejected as defective" and deposited in the ballot box, the elector appearing has the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are used, he shall vote by machine as other voters.

History: En. Sec. 132, Ch. 368, L. 1969.

23-3715. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969.

23-3716. Voting machines—canvass of votes. (1) In precincts where voting machines are used, the registrar, city clerk, or clerk of a school district shall print and provide ballots in official form for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

(3) In making the official canvass, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

History: En. Sec. 134, Ch. 368, L. 1969.

23-3717. False swearing perjury—official misconduct a misdemeanor. (1) If a person willfully swears falsely to any affidavit he is guilty of perjury.

(2) If the registrar, clerk, or any election officer:

(a) Refuses or neglects to perform any duties prescribed by this act,

(b) Makes false statements in his certificate regarding affidavits,

(c) Looks at any marks made by the voter upon the ballot,

(d) Allows any person other than the voter to be present at the marking of such ballot,

(e) Sees any marks made by the voter on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars ($500), imprisoned in the county jail for not more than six (6) months, or both.

History: En. Sec. 135, Ch. 368, L. 1969.

23-3718. "Elector in the United States service" defined. "Elector in the United States service" means:

(1) A member of the armed forces in the active service, and his spouse and dependents;

(2) A member of the merchant marine of the United States and his spouse and dependents;

(3) A member of a religious group or welfare agency assisting members of the armed forces of the United States who are officially attached to and serving the armed forces, and his spouse and dependents;

(4) A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969; amd. Sec. 1, Ch. 249, L. 1971.

Amendments

The 1971 amendment inserted subdivi-

sion (2); and revised and redesignated as subdivision (4) former subdivision (2) reading "A civilian employee of the United States in all categories serving outside the territorial limits of the several states of the United States or in the District of Columbia and his spouse and dependents when residing or accompanying him."

23-3719. Registration of absent electors in United States service. (1) An elector in United States service who is absent from the state is entitled to register by mailing to the registrar a federal post card application filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

History: En. Sec. 137, Ch. 368, L. 1969.

23-3720. Oath for elector in United States service. (1) Any oath required for electors in the United States service to register, request a ballot, or vote, may be administered and attested, within or without the United States, by any commissioned officer in active service, any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, the head of any department or agency of the United States, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States.

(2) No official seal is required to be affixed to the oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971.

Amendments

The 1971 amendment inserted "any member of the merchant marine * * * or agency of the United States" in the middle of subsection (1); added "or any civilian employee designated by the head of any department or agency of the United States" at the end of subsection (1); and made a minor change in phraseology.

23-3721. Classification of federal post card application. (1) Upon receipt by the registrar of a federal post card application properly filled out and signed under oath, the registrar shall classify the application according to the precinct in which the elector resides and arrange the cards in each precinct in alphabetical order.

(2) The registrar shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by the elector.

(3) Immediately upon entry in the official registry of the name of the elector the registrar shall send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk.

(4) A federal post card application received from an elector in the United States service within forty-five (45) days preceding an election shall be treated as a simultaneous application for registration and for ballot. Where the elector is already registered the federal post card application shall be treated as an application for a ballot.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971.

Amendments

The 1971 amendment rewrote subsection (3) which formerly read, "If an elector in the United States service has not already requested an absentee ballot, the registrar shall, immediately upon entry in the official registry of the name of the elector send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk"; and added subsection (4).

23-3722. Method of registration of voter absent from county. (1) An elector who is unable to make personal application for registration by reason of being absent from the county, may register to vote prior to the close of registration before any election, by appearing, executing and verifying under oath, before a notary public or other officer empowered to administer oaths, at any place within the United States, a registration card as provided in sections 23-3701 through 23-3723.

(2) He must return the card in sufficient time to reach the registrar before the close of registration.

(3) The elector's name may not be entered in the official register until at least two (2) registered electors of the county in which the elector desiring to be registered has his place of residence as stated in his application for registration, appear before the registrar and make affidavits in writing, stating that they are personally acquainted with the applicant, are familiar with and know his signature, and have seen him write and that the signature subscribed to the application or [for] registration is the signature of the elector.

History: En. Sec. 140, Ch. 368, L. 1969.

23-3723. Registration card mailed upon application. (1) The registrar of the county of the elector's legal residence shall furnish to any elector applying, whether application be made by mail, telegram or telephone, a registration card.

(2) The card shall be sent postage prepaid by the registrar to the address furnished by the elector at the time of making his application.

History: En. Sec. 141, Ch. 368, L. 1969.

23-3724. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when, and place where, registration is required, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to 12 noon on the day before the election, provided that said elector shall execute a sworn affidavit qualifying him under this section, to be filed in the office of his registration. County registrar shall provide to the person registering under the provisions of this section, a certificate stating the precinct in which he is entitled to vote which shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971.

Title of Act

An act to amend Title 23, Chapter 37, R.C.M. 1947, by adding a new section re-

lating to absentee voting and registration, providing for the registration of electors whose United States services or employment has terminated too late to register in person to vote in the next ensuing election.

CHAPTER 38

VOTING MACHINES

Section
23-3801. Voting machines—secretary of state.
23-3802. Specifications of machines required.
23-3803. Providing voting machines—payment.
23-3804. Preparation of machines for use.
23-3805. Write-in ballots.
23-3806. Placement of machines—time voter to remain in booth—election board make-up.
23-3807. Registrar to instruct election judges.
23-3808. Publication of information concerning machines.
23-3809. Voting machine to be exhibited.
23-3810. Furnishing samples and supplies.
23-3811. Registry lists—provision for number of each ballot.
23-3812. Assistance to illiterate, blind or physically disabled voters.
23-3813. Counting the votes.
23-3814. Procedure after count is ascertained.
23-3815. Disposition of write-in ballots and tally sheets.
23-3816. Return sheets—contents.
23-3817. Experimental use of machines.
23-3818. Machine breakdowns—electors may vote by paper ballot upon request.
23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout.
23-3820. Penalty for tampering with or injuring machines.
23-3821. Penalty for fraudulent returns or certificates.
23-3822. Applicability of election laws in general where not in conflict with this chapter.

23-3801. Voting machines—secretary of state. (1) Before any voting machine can be used, the secretary of state shall:

(a) Examine the machine to determine if it complies with the requirements of sections 23-3801 through 23-3822.

(b) Within thirty (30) days after examining a machine, file a report in his office on each machine examined;

(c) Within five (5) days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state sixty (60) days or more prior to the election.

(3) The secretary of state may employ qualified mechanics who are electors to assist him in duties required by this chapter and compensate them.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund.

History: En. Sec. 142, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior voting machine law was not invalid as in contravention of section 1, article IX of the constitution of Montana which provided that all elections shall be "by ballot"; the term "ballot" be-

ing employed not to designate a piece of paper, but a method to ensure, so far as possible, the secrecy and integrity of the popular vote. State ex rel. Fenner v. Keating, 53 M 371, 377, 163 P 1156.

23-3802. Specifications of machines required. (1) A machine or machine system may not be approved unless:

(a) An elector can vote in secrecy as he is entitled to vote by law;

(b) An elector is prevented from voting for any candidate or upon any question more than once and is also prevented from voting for any person or on any proposition, if he is not entitled to vote;

(c) An elector can vote a split ticket if he desires;

(d) Every vote cast is registered and recorded.

(2) The candidates for president and vice-president shall appear on the machine ballot. Presidential electors shall not appear on the machine.

(3) The machine or machine system must be constructed so that it cannot be tampered with for a fraudulent purpose and must also be constructed so that during the progress of the voting no person can see or know the number of votes registered for any candidate or on any proposition.

History: En. Sec. 143, Ch. 368, L. 1969.

Tampering with Machine

Act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 M 371, 381, 163 P 1156.

23-3803. Providing voting machines — payment. (1) Commissioners and councils may provide approved voting machines as practicable.

(2) Not later than September 10, prior to a general election, the commissioners or council of a city may unite two (2) or more precincts to use a voting machine. Notice of the consolidation shall be given as provided by law for the change of election districts.

(3) Funds for voting machines may be provided by interest-bearing bonds, certificates of indebtedness, or other obligations. The term of the bonds, certificates, or other obligations may not exceed ten (10) years and they shall not be issued or sold at less than par.

History: En. Sec. 144, Ch. 368, L. 1969.

23-3804. Preparation of machines for use. (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

(a) Set, adjust, and put the machines in order;

(b) Deliver the machines to the precincts together with necessary furniture and appliances;

(c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least one (1) row shall separate the rows assigned to the two (2) major political parties. This row shall be used for the nonpartisan judicial ballot.

(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the two (2) major parties shall be rotated between the first two (2) horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first two (2) horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged.

History: En. Sec. 145, Ch. 368, L. 1969.

23-3805. Write-in ballots. (1) If a voting machine allows registry or recording of votes for candidates whose names are not on the official ballot, these ballots are write-in ballots.

(2) A person whose name appears on a ballot shall not receive votes for the same office on a device for casting a write-in ballot.

History: En. Sec. 146, Ch. 368, L. 1969.

23-3806. Placement of machines—time voter to remain in booth—election board make-up. (1) The exterior of the voting machines and every part of the polling place shall be in plain view of the election judges.

(a) The machines shall be placed so that other persons on the premises cannot see how the voter casts his vote.

(b) The election judges shall not permit any person to remain in any position that would permit him or them to see how the voter votes or has voted.

(c) A voter shall not remain within the voting machine booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

(2) The election board of a precinct in which a voting machine is used consists of three (3) election judges and any special board of election judges appointed to count absentee ballots. If more than one (1) machine is used, one (1) additional election judge shall be appointed for each additional machine.

History: En. Sec. 147, Ch. 368, L. 1969.

23-3807. Registrar to instruct election judges. (1) Before each election, the registrar shall instruct all election judges in the use of the machine and their duties. He shall give to each election judge that has re-

ceived instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge shall not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the custodian. However, this shall not prevent an emergency appointment of an election judge.

History: En. Sec. 148, Ch. 368, L. 1969.

23-3808. Publication of information concerning machines. Not more than ten (10) nor less than three (3) days before an election at which voting machines are used, the registrar or city clerk shall publish in a newspaper of general circulation in the county:

(1) A diagram showing the voting machine with official ballot labels;

(2) A statement of the locations where voting machines are on public exhibition;

(3) Illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969.

23-3809. Voting machine to be exhibited. A voting machine shall be on exhibition in the office of the registrar or city clerk where voting machines are used. The registrar or city clerk shall demonstrate the voting machine to any inquiring voter.

History: En. Sec. 150, Ch. 368, L. 1969.

23-3810. Furnishing samples and supplies. (1) Not later than forty (40) days before an election, the secretary of state shall prepare samples of the printed matter and supplies named in this section and furnish one of each to the election officials where machines are used. The samples shall meet the requirements of the election and the construction of the machine used.

(2) The registrar or city clerk shall provide supplies for each machine including:

(a) Written instructions for the election judges on testing and preparing the machines;

(b) A certificate for the election judges to certify that they have tested and prepared the machine;

(c) A certificate for the person preparing the machine to certify that the machine has been examined and is properly prepared for the election;

(d) A certificate for party representatives to verify that they have witnessed the testing and preparation of the machines;

(e) A certificate for the deliverer of the machine to certify that he has delivered the machines to the polling places in good order;

(f) A card stating the penalty for tampering with or injuring a voting machine;

(g) Two (2) seals for sealing the voting machine;

(h) One (1) envelope with a detachable delivery receipt in which the keys to the voting machine can be sealed and delivered to the election officials having printed on it the designation and location of the election district, the number of the machine, the number on the protective counter after the machine has been prepared for the election, and the number of the seal;

(i) One (1) envelope in which keys to the voting machine can be returned after the election;

(j) Two (2) statements of canvass for election officers to report the canvass of votes and other necessary information relating to the election;

(k) Three (3) complete sets of ballot labels in a form prescribed by the secretary of state and two (2) diagrams of the face of the machine with the ballot labels on the machine, each having proper voter instructions;

(l) Six (6) instructions to election judges and six (6) notices of the instruction meeting;

(m) Six (6) certificates that election judges have attended the instruction meeting, received instruction, and are qualified to conduct the machine election.

History: En. Sec. 151, Ch. 368, L. 1969.

23-3811. Registry lists—provision for number of each ballot. If voting machines are used, the registry lists shall contain a column to enter the number of each ballot as indicated by the number on the machine counter. Books or blanks for making poll lists shall not be provided.

History: En. Sec. 152, Ch. 368, L. 1969.

23-3812. Assistance to illiterate, blind or physically disabled voters. [(1)] A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in section 23-3609.

(2) A person who deceives an elector voting under this section shall be punished as provided in section 23-4707, R.C.M. 1947.

History: En. Sec. 153, Ch. 368, L. 1969.

Section 23-4707 was originally numbered 94-1407. For text, see bound Volume Eight under the latter section.

Compiler's Notes

The compiler has inserted the bracketed subsection designation "(1)."

23-3813. Counting the votes. When the polls close, the election judges shall immediately lock the machine or remove the recording device and open the registering or recording compartments in the presence of any person desiring to attend. They shall ascertain the number of votes cast for each candidate, canvass, record, announce, and return the votes as provided by law.

History: En. Sec. 154, Ch. 368, L. 1969.

23-3814. Procedure after count is ascertained. (1) After the count is ascertained, the election judges shall place the machine in full view of

the public for one (1) hour so that any person may view the number of votes cast.

(2) Immediately after the hour has passed, the election judges shall seal and lock the machine. Unless used in a city primary election or ordered opened earlier by a court or the county recount board, the machine shall remain sealed and locked for twenty (20) days.

(3) If a machine has been used in a city primary election, it shall remain locked and sealed for at least five (5) days, unless opened by court order.

History: En. Sec. 155, Ch. 368, L. 1969.

23-3815. Disposition of write-in ballots and tally sheets. (1) The election judges shall return write-in ballots in a sealed package endorsed "write-in ballots." The election judges shall indicate the precinct and county and file the package with the registrar or city clerk. Each package shall be preserved for six (6) months after the election and may be opened only upon order of a court or the county recount board. At the end of six (6) months, the package shall be destroyed by the registrar or city clerk unless a court orders otherwise.

(2) Tally sheets taken from the machine, if any, shall be returned in the same manner.

History: En. Sec. 156, Ch. 368, L. 1969.

23-3816. Return sheets—contents. Officers who furnish tally sheets shall also furnish return blanks and certificates to the election officers. The return sheets shall:

(1) Have each candidate's name designated by the same reference character that the name bears on the ballot labels and counters and allow for writing in a vote for the candidate in figures, words, or both;

(2) Provide for the return of the vote on questions;

(3) Have a blank for indicating the precinct, ward, number and make of machine used, and other necessary information;

(4) Have a certificate to be executed before the polls open by the election judges stating that all counters except the protective counter, if any, and except as otherwise noted, stood at "000" at the beginning of the election, that all counters were examined before the election, that ballot labels were correctly placed on the machine and corresponded to the sample ballot, and other statements as the particular machine may require;

(5) Have a second certificate stating the manner of closing the polls and verifying the returns; that the returns are correct; giving the indication of the public counter, poll list, and protective counter, if any. The certificate shall specify the procedure of canvassing the vote and locking the machine and shall be signed by the election officials. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 157, Ch. 368, L. 1969.

23-3817. Experimental use of machines. Officials authorized to adopt voting machines, may provide for the experimental use at an election of

a machine, approved by the secretary of state, in one (1) or more precincts without a formal adoption or purchase of the machine. The use at an election is valid for all purposes as if the machine had been formally adopted.

History: En. Sec. 158, Ch. 368, L. 1969.

23-3818. Machine breakdowns—electors may vote by paper ballot upon request. (1) If a machine becomes unworkable or unfit for use, voting shall proceed on another available machine or as in cases where machines are not used. The registrar shall furnish each voting place with a supply of ballots and other supplies to be used in case of emergency.

(2) Where voting machines are used, an elector may request to vote by paper ballot instead of using the voting machines. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969.

23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout. In precincts where voting machines are used and the machines do not allow proper lockout, separate paper ballots shall be issued for money issues which do not involve the question of incurring of a state indebtedness, issuance of state bonds or debentures other than for refunding, or the levy of a tax for state purposes.

History: En. Sec. 160, Ch. 368, L. 1969.

23-3820. Penalty for tampering with or injuring machines. Any person who tampers, disarranges, defaces, injures, or impairs a voting machine in any way, or who mutilates, injures, or destroys any ballot or any appliance used in connection with a voting machine shall be imprisoned in the state prison for a period of not more than ten (10) years, be fined not more than one thousand dollars ($1,000), or both.

History: En. Sec. 161, Ch. 368, L. 1969.

23-3821. Penalty for fraudulent returns or certificates. A person who purposely causes the vote on a machine to be incorrectly taken down as to the candidate or proposition voted on; who knowingly causes a false statement, certificate, or return of any kind to be signed or who knowingly consents to such things being done, shall be imprisoned in the state prison not more than (10) years, be fined not more than one thousand dollars ($1,000), or both.

History: En. Sec. 162, Ch. 368, L. 1969.

23-3822. Applicability of election laws in general where not in conflict with this chapter. All laws applicable to elections where voting is not done by machine, and all penalties prescribed for violations of those laws, apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of sections 23-3801 through 23-3821.

History: En. Sec. 163, Ch. 368, L. 1969.

CHAPTER 39

ELECTRONIC VOTING SYSTEMS

Section
23-3901. Purpose of act.
23-3902. Definitions.
23-3903. Use of electronic voting systems—paper ballots may be used upon request.
23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.
23-3905. Procedure upon closing polls.
23-3906. Rules and regulations—specifications for devices and equipment.
23-3907. Applicability of election laws in general where not in conflict with this chapter.

23-3901. Purpose of act. The purpose of sections 23-3902 through 23-3907 is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

History: En. Sec. 164, Ch. 368, L. 1969.

23-3902. Definitions. As used in sections 23-3903 through 23-3907, unless otherwise specified:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(2) "Ballot card" means a ballot which is voted by the process of punching.

(3) "Ballot labels" means the cards, paper, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(4) "Ballot" may include ballot cards, ballot labels and paper ballots.

(5) "Counting location" means a location selected by the registrar or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(6) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(7) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History: En. Sec. 165, Ch. 368, L. 1969.

23-3903. Use of electronic voting systems—paper ballots may be used upon request. (1) Electronic voting systems may be used in elections, after approval as provided by law, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be

set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(2) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(3) So far as applicable, the procedure provided for voting paper ballots shall apply.

(4) The governing body of any county or city may, after approval as provided by law, adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

(5) In precincts where an electronic voting system is used, an elector may request a paper ballot to cast his vote and the election judges shall supply the elector with the paper ballot when so requested. These ballots will be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 166, Ch. 368, L. 1969.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (1) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems and the booths shall be arranged in the same manner as provided for use with paper ballots.

(2) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(3) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any

voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(4) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(5) The registrar or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(6) Within five (5) days prior to the election day, the registrar or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city, or town using such equipment if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 167, Ch. 368, L. 1969.

23-3905. Procedure upon closing polls. (1) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The inspectors or other appropriate

precinct election officials shall compare the write-in votes with the votes cast on the ballot card and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and its shall be returned to the counting location in an envelope marked "defective ballots" and such invalid votes shall not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered forthwith by the election judges to the counting location or other designated place, together with the unused, void and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot, ballot container or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

History: En. Sec. 168, Ch. 368, L. 1969.

23-3906. Rules and regulations—specifications for devices and equipment. (a) The secretary of state, state auditor and president of the Montana county clerk and recorders association shall constitute a board of election devices, which shall promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one (1) party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one (1) punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

(5) No electronic voting system presently in use by any county, city or town in Montana shall be disapproved for use in such county, city or town by the board, except upon application by the governing body of said county, city or town.

History: En. Sec. 169, Ch. 368, L. 1969.

23-3907. Applicability of election laws in general where not in conflict with this chapter. All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of sections 23-3901 through 23-3906.

History: En. Sec. 170, Ch. 368, L. 1969.

CHAPTER 40

CANVASS OF VOTES—RETURNS AND CERTIFICATES

Section

23-4001. Votes to be publicly canvassed upon closing polls.
23-4002. Method of canvass.
23-4003. Counting ballots—pollbooks.
23-4004. Marking rejected ballots.
23-4005. Signing and certifying pollbooks.
23-4006. Items to be sent to registrar by election judges—manner of sending.
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23-4008. Disposition of items in event of contest.
23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board.
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23-4011. Canvass to be public—nonessentials to be disregarded in counting returns.
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23-4013. Declaration of persons elected—certifying tie.
23-4014. Certificates issued by the clerk.
23-4015. State returns, how made and transmitted.
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23-4017. Messenger may be sent for returns.
23-4018. Governor to issue commissions.
23-4019. Defect in form of returns to be disregarded.

23-4001. Votes to be publicly canvassed upon closing polls. When the polls are closed, the election judges shall immediately canvass the votes. The canvass shall be public and continue without adjournment until completed and the result is publicly declared.

History: En. Sec. 171, Ch. 368, L. 1969.

23-4002. Method of canvass. (1) The canvass shall begin by a comparison of the pollbooks and the correction of any mistakes until they agree.

(2) The election judges shall take ballots unopened out of the box to determine whether each ballot is single.

(3) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbooks.

(4) A ballot which is not endorsed by the official stamp is void and shall not be counted. A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(5) If two (2) or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks and if a majority believe that the ballots folded together were voted by one (1) elector, they must be rejected; otherwise they must be counted.

(6) If the ballots exceed the number of names on the pollbooks they shall be placed in the box, and one (1) of the election judges shall publicly draw from the box and destroy unopened ballots equal to the excess. The election judges shall record in the pollbooks the number of ballots destroyed.

History: En. Sec. 172, Ch. 368, L. 1969.

Determining Elector's Intention

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under prior section, and should not have been counted in an election contest. Carwile v. Jones, 38 M 590, 598, 101 P 153.

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. Peterson v. Billings, 109 M 390, 392, 96 P 2d 922.

Under prior section, and the rule that election laws must be liberally construed, a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and one showing the intersection of the cross squarely on the line of the square was properly so counted for him. Peterson v. Billings, 109 M 390, 393, 96 P 2d 922.

Official Stamp on Ballot Stub

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. Harrington v. Crichton, 53 M 388, 396, 164 P 537.

School Elections

The validity of contested school elections is determined by the laws of general elections, including canvassing statute. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

23-4003. Counting ballots—pollbooks. (1) When the ballots and poll lists agree, the election judges shall count and determine the votes cast for each person.

(2) In counting, the ballots shall be opened singly by one (1) of the election judges and the contents read aloud to the other judges.

(3) As the ballots are read, each clerk must write on a tally sheet the name of every person voted for and the office, and keep tallies of the number of votes for each person.

(4) The tally sheets shall be compared and their correctness ascertained, and the clerks, under the supervision of the election judges, shall immediately write in the pollbooks:

(a) The names of all persons who received votes;
(b) The offices for which they received votes;
(c) Total votes received by each person as shown by the tally sheets.
(5) A ballot or vote rejected by the election judges shall not be included in the count.

History: En. Sec. 173, Ch. 368, L. 1969.

23-4004. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges, by writing across the face "Rejected on the ground of .....," filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969.

23-4005. Signing and certifying pollbooks. Immediately after the votes are counted and the ballots sealed up, the pollbooks shall be signed and certified to by the election judges and clerks in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969.

23-4006. Items to be sent to registrar by election judges—manner of sending. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely sealed and directed to the registrar:
(a) The precinct registers,
(b) The lists of persons challenged,
(c) Both of the pollbooks,
(d) Both of the tally sheets.
(2) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all unused ballots with the numbered stubs attached.
(3) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all ballots voted including those not counted or allowed, and all detached stubs from ballots voted. This envelope shall be endorsed on the outside "ballots voted."
(4) Each election judge shall write his name across the seal of each of the envelopes or packages. The ballot box shall be returned to the registrar.
(5) The envelopes or packages required by this section shall be delivered to one (1) of the election judges chosen by lot, unless otherwise agreed upon, before they adjourn. The judge shall deliver them to the registrar in person or by registered mail no later than 10 a. m. on the day following the election.

History: En. Sec. 176, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

One Copy To Be Returned

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and one copy of the pollbook. State ex rel. Lynch v. Batani, 103 M 353, 361, 62 P 2d 565.

23-4007. Disposition of items by registrar. (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest begun in a court or no recount, he shall burn the envelopes without opening them or examining their contents.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners.

History: En. Sec. 177, Ch. 368, L. 1969.

23-4008. Disposition of items in event of contest. If there is a contest within twelve (12) months, the registrar shall keep the envelopes or packages unopened until the contest is finally determined and then destroy them. If the court has custody of the envelopes or packages as evidence, they are in the custody of the court and the registrar shall not destroy them.

History: En. Sec. 178, Ch. 368, L. 1969.

23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board. (1) The commissioners are ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the commissioners within three (3) days after each election, at 8 a. m. to canvass the returns.

(2) If one (1) or more of the commissioners cannot attend the meeting, his place shall be filled by one (1) or more county officers in this order: treasurer, assessor, sheriff, so that the board of county canvassers membership equals membership on the board of commissioners.

(3) The registrar is clerk of the board of county canvassers.

History: En. Sec. 179, Ch. 368, L. 1969.

Change in Membership of Board

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 29, 31 P 879.

23-4010. Canvassing returns, time of — messenger — certification that polls were not open. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received or until there have been seven (7) postponements.

(3) If the returns from an election precinct have not been received by the registrar within seven (7) days after an election, he shall immediately send a messenger to the election judges. The messenger must obtain the returns from the judges and return them to the registrar.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the registrar. The registrar shall enter the certification in the minutes and in the statement required by section 23-4012.

History: En. Sec. 180, Ch. 368, L. 1969.

23-4011. Canvass to be public—nonessentials to be disregarded in counting returns. (1) The canvass shall be public. It shall proceed by opening the returns and determining the vote for each person and each proposition from each precinct and a declaration of the results.

(2) The returns shall not be rejected if they do not show who administered the oath to the election judges or clerks, failure to complete all the certificates in the pollbooks, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

History: En. Sec. 181, Ch. 368, L. 1969.

Rejection of Returns

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person upon the ground that the nomination was invalid. Pigott v. Board of Canvassers of Cascade County, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 30, 31 P 879. See also State ex rel. Breen v. Toole, 32 M 4, 10, 79 P 403; Poe v. Sheridan County, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 31, 31 P 879.

Returns in the pollbook being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 31, 31 P 879.

It is the duty of the board of canvassers to procure the check lists and surrendered lists before rejecting the vote of a precinct as returned by the pollbooks alone. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 31, 31 P 879.

23-4012. Statement of the result to be entered of record. As soon as the results are declared, the clerk of the board shall enter on the records:

(1) Votes cast in the county;

(2) Names of the persons voted for and the propositions voted upon;

(3) Office for which each person was voted for;

(4) Votes by precinct for each person and for and against each proposition;

(5) Votes by county for each person, and for and against each proposition.

History: En. Sec. 182, Ch. 368, L. 1969.

23-4013. Declaration of persons elected — certifying tie. (1) The board shall declare elected the persons having the highest number of votes given for each office to be filled in a single county or subdivision of a county.

(2) If a recount shows that two (2) or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor.

History: En. Sec. 183, Ch. 368, L. 1969.

Deceased Candidate Receives Majority

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-4014. Certificates issued by the clerk. (1) The clerk shall immediately deliver to each person elected a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within thirty (30) days after notice of election or appointment and that failure to file the bond vacates the office.

(3) This certificate shall not be issued to persons elected district judge.

History: En. Sec. 184, Ch. 368, L. 1969.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

23-4015. State returns, how made and transmitted. (1) After a general or special election, the clerk shall make an abstract of the vote for members of the legislative assembly, for officers elected in the state at large, and for judicial officers other than justices of the peace.

(2) The clerk shall seal the abstract, endorse it "Election Returns," and immediately send it to the secretary of state by registered mail.

History: En. Sec. 185, Ch. 368, L. 1969.

23-4016. State canvassers, composition and meeting of board. Within twenty (20) days after the election, or sooner if the returns are all received, the state auditor, state treasurer, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state, who is secretary of the board, shall make out and file in his office a statement of the canvass and transmit a copy to the governor.

History: En. Sec. 186, Ch. 368, L. 1969.

Cross-References

Board transferred to office of secretary of state, sec. 82A-2102.

23-4017. Messenger may be sent for returns. If the returns from all counties have not been received five (5) days before the meeting of the board of state canvassers, the secretary of state shall immediately send a messenger to the registrar of each delinquent county. The registrar shall furnish the messenger with a certified copy of the statement required by section 23-4012.

History: En. Sec. 187, Ch. 368, L. 1969.

23-4018. Governor to issue commissions. Upon receipt of the statement required by section 23-4016, the governor shall issue commissions to the persons elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 386, L. 1969.

23-4019. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969.

CHAPTER 41

RECOUNTS

Section

23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court.
23-4102. Recount limited to precincts and offices specified in order.
23-4103. Conditions under which recount to be made.
23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from.
23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time.
23-4106. Limitation of recount to certain precincts.
23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials.
23-4108. Procedure when more than one application for recount made.
23-4109. Manner of recounting ballots.
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23-4111. Sealing recounted ballots.
23-4112. Certificates of election, effect of recount on.
23-4113. Determining total vote cast for all candidates for an office.
23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk.
23-4115. Meeting of board when recount requested.
23-4116. Persons entitled to appear at recount—opening and recount of ballots.
23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.
23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination.
23-4119. Tie vote after recount.
23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator.
23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.
23-4122. Expenses of recount.

23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court. (1) Within five (5) days after the canvass of election returns, an unsuccessful candidate for any public office at a general, special, or city election may apply to the district court of the county where the election was held for an order directing the canvassing body to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within five (5) days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant were not correctly counted, he shall order the board of county canvassers to assemble within five (5) days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969.

Cross-References

Application of Montana Rules of Civil Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

Salaries withheld pending contests, secs. 59-508, 59-509.

Application Timely

Where the board was compelled by writ of mandate to reconvene by the supreme court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. State ex rel. Riley v. District Court, 103 M 576, 586, 64 P 2d 115.

Candidate for District Judge

Any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. State ex rel. Riley v. District Court, 103 M 576, 580, 64 P 2d 115.

Candidates for Legislature

Recount statutes apply to candidates for the state senate and house of representatives. State ex rel. Ainsworth v. District Court, 107 M 370, 372, 86 P 2d 5.

Courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by recount statutes, the election certificate does not ensure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. State ex rel. Ainsworth v. District Court, 107 M 370, 376, 86 P 2d 5.

Function and Jurisdiction of Court

District court committed error in dismissing the application for a recount on the ground that applicant, convicted of a felony in federal court, lost his citizenship. State ex rel. Stone v. District Court, 103 M 515, 519, 63 P 2d 147.

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. State ex rel. Riley v. District Court, 103 M 576, 587, 64 P 2d 115. (But see State ex rel. Peterson v. District Court, 107 M 482, 488, 86 P 2d 403, below.)

A recount of ballots is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." State ex rel. Peterson v. District Court, 107 M 482, 486, 86 P 2d 403.

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly by directions or suggestions to district courts. (If State ex rel. Riley v. District Court, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) State ex rel. Peterson v. District Court, 107 M 482, 488, 86 P 2d 403.

The law relating to proceedings for election recounts specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Grounds Sufficient

Where application for writ of supervisory control set forth that the votes were not correctly counted, such ground was sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. State ex rel. Thomas v. District Court, 116 M 510, 511, 154 P 2d 980.

Purpose of Act

The sole purpose of the recount statutes is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not ensure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of section 9, article V of the constitution. State ex rel. Ainsworth v. District Court, 107 M 370, 372, 86 P 2d 5.

Recount Proceeding Not Election Contest

A proceeding to obtain a recount of votes is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either or both remedies are available. State ex rel. Peterson v. District Court, 107 M 482, 484, 86 P 2d 403.

Successive Recounts

Where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Wrongful Canvass

Recount statutes do not afford a legal remedy for an alleged wrongful canvass by a county canvassing board, and therefore does not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. State ex rel. Lynch v. Batani, 103 M 353, 358, 62 P 2d 565.

DECISIONS UNDER FORMER LAW

Constitutionality

Former chapter on recounts was held constitutional as to sufficiency of title as to due process of law. State ex rel. Riley v. District Court, 103 M 576, 584, 586, 64 P 2d 115.

23-4102. Recount limited to precincts and offices specified in order. The board of canvassers shall recount votes only in those precincts and for those offices specified in the court order.

History: En. Sec. 191, Ch. 368, L. 1969.

23-4103. Conditions under which recount to be made. A recount shall be made under any of the following conditions.

(1) If a candidate other than for the office of district judge is defeated by a margin not exceeding one-fourth of one per cent (¼ of 1%) of the total votes cast or by a margin not exceeding ten (10) votes, whichever is greater, he may within five (5) days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate is defeated for the office of district judge or an office voted on in more than one (1) county by a margin not exceeding

one-fourth of one per cent (¼ of 1%) of the total votes cast for all candidates for the same position, he may within five (5) days after the official canvass file a petition with the secretary of state as set forth in subsection (1) of this section. The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by registered mail and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding one-fourth of one per cent (¼ of 1%) of the total votes cast for and against the question, a petition as set forth in subsection (1) of this section may be filed with the secretary of state. This petition shall:

(a) Be signed by not less than one hundred (100) electors of the state representing at least five (5) counties of the state and be filed within five (5) days after the official canvass;

(b) The secretary of state shall immediately notify each registrar by registered mail of the filing of the petition and a recount shall be conducted in all precincts in each county.

(4) If there is a tie vote, the board making the canvass shall certify the vote to the registrar if the election took place only in one (1) county and to the secretary of state for other elections. The registrar or secretary of state shall proceed as if a petition for recount had been filed under this act. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Sec. 192, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Clerk of District Court

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized to fill by appointment. State ex rel. Jones v. Foster, 39 M 583, 592, 104 P 860. See also State ex rel. Paterson v. Lentz, 50 M 322, 336, 146 P 932.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial officers, whose terms end at the expiration of a definitely fixed period, the words "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. State ex rel. Jones v. Foster, 39 M 583, 586, 104 P 860.

County School Superintendent

Former chapter governing proceedings on tie vote did not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it related to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it was invalid. State ex rel. Chenoweth v. Acton, 31 M 37, 40, 77 P 299. See State ex rel. Jones v. Foster, 39 M 583, 591, 104 P 860.

23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from. If it appears from a verified application that the election judges or clerks failed to comply with the provision of

section 23-4003, that is sufficient cause for believing that the election judges and clerks did not correctly ascertain the number of votes cast for the applicant.

History: En. Sec. 193, Ch. 368, L. 1969.

23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time. (1) If the judge of the district court of the county in which the election is held is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time, but shall retain jurisdiction until the cause is finally determined and the final count is made by the board of county canvassers.

History: En. Sec. 194, Ch. 368, L. 1969.

Jurisdiction Retained

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and recanvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e., until the court is advised thereof. State ex rel. Riley v. District Court, 103 M 576, 587, 588, 64 P 2d 115.

23-4106. Limitation of recount to certain precincts. (1) If the application asks for a recount in more than one (1) precinct, but there are not sufficient grounds for a recount in all precincts, the court shall order a recount only in the precincts for which sufficient grounds are stated and shown.

History: En. Sec. 195, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials. (1) The court in its order shall determine the probable expense of making the recount and the applicant or applicants asking for the recount shall deposit with the board the amount determined in cash.

(2) If the recount shows that the applicant or applicants have been elected to the office, the deposit of each applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost the difference shall be refunded to the applicant.

(4) Members of the canvassing board and their clerks shall be compensated for their time spent in canvassing.

History: En. Sec. 196, Ch. 368, L. 1969.

23-4108. Procedure when more than one application for recount made. If more than one (1) candidate makes application for a recount, the court may consider the applications together. The court may make separate or

joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969.

23-4109. Manner of recounting ballots. The board of canvassers in recounting the ballots shall count the votes cast, at the same time, in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The registrar shall produce, unopened, unless it is necessary for the registrar to open the package or envelope to secure election materials which have been sealed in the wrong envelope or package, the sealed package or envelope received from the election judges of the precinct, or precincts, in which a recount is ordered containing all ballots voted in the precinct or precincts;

(2) A member of the board of county canvassers shall open the sealed package or envelope in the presence of the other members, the registrar, and the applicant or applicants seeking the recount;

(3) A member of the board shall then remove the ballots from the package or envelope in the presence of the applicant or applicants seeking the recount and the candidate or candidates who received the highest number of votes by the first canvass;

(4) One (1) of the members of the board, in the presence and view of the candidates and one (1) other board member, shall read each ballot aloud. As the ballots are read, two (2) clerks shall write the votes cast for each person in each precinct at full length, on previously prepared tally sheets showing the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct;

(5) At the completion of the recount, the tally sheets shall be compared, their correctness ascertained, and the total number of votes cast for each candidate determined;

(6) If the recount shows the votes for any applicant are more or less than the number shown upon the official returns, the clerk of the board of canvassers shall correct the original returns to state the number of votes ascertained by the recount;

(7) The board of canvassers shall direct the clerk to enter the result of the election as determined by the recount on the board records and the clerk shall make out and deliver a certificate of election which conforms to the result of the recount.

History: En. Sec. 198, Ch. 368, L. 1969.

23-4110. Service of copy of application on candidate originally found to be elected—hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969.

23-4111. Sealing recounted ballots. When the recount in a precinct has been finished, the ballots shall again be sealed in the same package

or envelope in the presence of the registrar and the members of the board of canvassers and shall be delivered to the registrar for custody.

History: En. Sec. 200, Ch. 368, L. 1969.

23-4112. Certificates of election, effect of recount on. If the recount shows that the person who received the certificate of election according to section 23-4014 did not receive the highest number of votes, the registrar shall issue a new certificate to the person receiving the highest number pursuant to the recount and the first certificate is void. The person receiving the second certificate shall be elected to the office.

History: En. Sec. 201, Ch. 368, L. 1969.

23-4113. Determining total vote cast for all candidates for an office. When an elector may vote for two (2) or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969.

23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk. (1) The county recount board shall always consist of three (3) acting members.

(2) The county recount board is the board of county commissioners.

(3) If one (1) or more of the commissioners cannot attend when the board meets, his place shall be filled by a county officer in the following order of appointment: the treasurer, the assessor, the sheriff, the clerk of court.

(4) If a member of the recount board was a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The registrar is clerk of the recount board, and the board may hire additional clerks as needed.

History: En. Sec. 203, Ch. 368, L. 1969.

23-4115. Meeting of board when recount requested. (1) Immediately upon receiving an application for a recount or notice from the secretary of state that an application has been filed with him, the registrar shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the commissioners without undue delay but not later than five (5) days after receiving notice from the registrar.

History: En. Sec. 204, Ch. 368, L. 1969.

23-4116. Persons entitled to appear at recount—opening and recount of ballots. (1) Each candidate involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(2) If the recount is upon a referred or submitted question, one (1) qualified elector favoring each side of the question may be present and represent his side.

(3) The registrar shall produce, unopened, the sealed package or envelope received from the election judges in each election precinct in the county.

(4) The recount shall proceed as provided in section 23-4109 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969.

23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination. (1) Immediately after the recount the county recount board shall certify the result.

(2) At least two (2) members of the board shall sign the certificate and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for an office, nomination, position, or question voted upon in more than one (1) county or for judge of the district court, the certificate shall be made in duplicate. One (1) copy shall be transmitted immediately to the secretary of state by registered mail.

(5) If the recount relates to an office, nomination, position, or question voted upon in only one (1) county, or part of a single county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(a) If the corrected abstract shows no change in the result, no further action shall be taken.

(b) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated.

History: En. Sec. 206, Ch. 368, L. 1969.

23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, and fix a time and place as soon as possible for reconvening the state board of canvassers, and shall notify the members.

(2) The state board of canvassers shall recanvass the official returns on the office, nomination, position or question, as corrected by the certificates and make a new and corrected abstract of the votes cast.

(a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or

nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969.

23-4119. Tie vote after recount. If the recount shows a tie vote and it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-4120 and 23-4121.

History: En. Sec. 208, Ch. 368, L. 1969.

23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator. (1) If there is a tie vote for United States representative, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

(2) If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislative assembly the secretary of state shall send a certified statement to the governor showing the vote cast for each person, and the governor shall appoint an eligible person to hold office.

History: En. Sec. 209, Ch. 368, L. 1969.

23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners. (1) If there is a tie vote for governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, shall elect a person to fill the office by joint ballot of the two (2) houses.

(2) If there is a tie vote for clerk of the district court, county attorney, any county officer except county commissioner, or for a township officer, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the legislative assembly showing the votes cast for the two (2) or more persons having an equal and the highest number of votes.

History: En. Sec. 210, Ch. 368, L. 1969.

23-4122. Expenses of recount. The expense of the recount is a county charge. Expenses of the secretary of state and state board of canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969.

CHAPTER 42

CONTESTS OF BOND ELECTIONS

Section
23-4201. Grounds for challenge.
23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.

23-4201. Grounds for challenge. (1) Any elector qualified to vote in a bond election of a county, city, or of any political subdivision of either may contest a bond election, for any of the following causes:

(a) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(b) That any official charged with a duty under this act, failed to perform that duty;

(c) That in conducting the election, any official charged with a duty under this act, violated any of the provisions of this act relating to bond elections;

(d) That electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(e) That electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(2) Within sixty (60) days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

History: En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971.

Amendments

The 1971 amendment added subdivisions (d) and (e) to subsection (1); and changed the filing time specified in subsection (2) from five days to sixty days after the election.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues. (1) Within five (5) days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order, and shall serve the citation immediately upon the defendant either:

(a) Personally, or

(b) If the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within ten (10) days after submission thereof, the court shall file its findings of fact and conclusions of law, and immediately shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969.

CHAPTER 43

PRESIDENTIAL ELECTORS

Section
23-4301. Election of electors, when chosen and number.
23-4302. Nomination of electors—ballot—votes.
23-4303. Returns—lists of electors elected.
23-4304. Meeting and voting of electors.
23-4305. Lists of persons voted for.
23-4306. Compensation of electors.
23-4307. Vacancy, how filled.

23-4301. Election of electors, when chosen and number. On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors for president and vice-president of the United States as are allocated to this state.

History: En. Sec. 214, Ch. 368, L. 1969.

23-4302. Nomination of electors — ballot — votes. (1) Each political party shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates at the time and in the manner and number provided by law.

(2) The secretary of state shall certify to the registrars the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice-president shall not be printed upon the ballot.

(4) The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: En. Sec. 215, Ch. 368, L. 1969.

Nomination for Public Office

The nomination for presidential electors is a nomination for public office. State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366.

23-4303. Returns—lists of electors elected. (1) The votes for candidates for president and vice-president shall be given, received, returned and canvassed as the votes are given, returned, and canvassed for candidates for Congress.

(2) The secretary of state shall prepare three (3) lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969.

23-4304. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p. m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one (1) person for president and one (1) for vice-president of the United States.

History: En. Sec. 217, Ch. 368, L. 1969.

Extension of Time Unconstitutional

Since, under prior section and the federal act (U.S.C., Tit. 3, sec. 5, enacted pursuant to section 1, article II of the federal constitution), the presidential electors must meet on the first Monday after the second Wednesday in December following their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. Maddox v. Board of State Canvassers, 116 M 217, 224, 149 P 2d 112.

23-4305. Lists of persons voted for. (1) The electors shall make lists of the persons voted for as president and vice-president, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4306. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislative assembly. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969.

23-4307. Vacancy, how filled. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969.

CHAPTER 44

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

Section
23-4401. Election of United States senators and representatives—for full term and to fill vacancies.
23-4402. Writs of election to fill vacancy.
23-4403. Certificates issued by governor.
23-4404. Residence required for election or appointment to Congress.

23-4401. Election of United States senators and representatives—for full term and to fill vacancies. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) If a vacancy occurs for senator, or United States representative, an election to fill the vacancy shall be held at the next general election. If an election is invalid or not held at that time, the election shall be at the second succeeding general election.

(3) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969.

23-4402. Writs of election to fill vacancy. If a vacancy occurs in the office of United States senator or representative, the governor shall issue

a writ of election to fill the vacancy. The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969.

23-4403. Certificates issued by governor. Upon receipt of the statement required by section 23-4016, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969.

23-4404. Residence required for election or appointment to Congress. A person who has not resided in this state at least one (1) year prior to his election or appointment is not eligible for the office of United States senator or representative.

History: En. Sec. 224, Ch. 368, L. 1969.

CHAPTER 45

NONPARTISAN NOMINATION AND ELECTION OF JUDGES

Section
23-4501. Judicial offices as separate and independent offices for election purposes.
23-4502. Nominations.
23-4503. Declarations for nomination—contents—fee.
23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.
23-4505. Primary ballots—preparation and distribution.
23-4506. Judicial primary ballots.
23-4507. Separate counting and canvassing of judicial ballots—application of general laws.
23-4508. Nominations—placing names on ballots.
23-4509. Tie vote, how decided.
23-4510. Vacancies among nominees after nomination and before general election, how filled.
23-4510.1. Form of ballot on retention of incumbent supreme court justice.
23-4510.2. Form of ballot on retention of incumbent district court judge.
23-4511. Unlawful for political party to endorse judicial candidate.

23-4501. Judicial offices as separate and independent offices for election purposes. (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before a primary nominating election.

(2) Each judicial office in a district which has more than one (1) district judge is a separate and independent office for election purposes.

History: En. Sec. 225, Ch. 368, L. 1969.

Purpose and Construction of Act

Purpose of prior act was to eliminate, so far as possible, the selection of judges from partisan politics. The word "candidate" as used in act was not to receive a different construction from that as used in the general primary law. The act was to be construed in pari materia with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4502. Nominations. Candidates for the supreme court or district court shall be nominated according to primary election laws so far as they are consistent with the provisions of this chapter.

History: En. Sec. 226, Ch. 368, L. 1969.

23-4503. Declarations for nomination — contents — fee. (1) Judicial candidates shall file declarations for nomination as required by the primary election laws in a form specified by the secretary of state.

(2) Declarations for nomination as associate justice of the supreme court shall designate the number of the office. A person can make only one (1) designation.

(3) Candidates for nomination as district judge in a district having more than one (1) judge shall specify the number of the office. His candidacy is limited to the number specified.

(4) Declarations shall not indicate political affiliation. The candidate shall not state in his declaration any principles or measures he advocates nor any slogans.

(5) Each person filing a declaration shall remit the fee prescribed by law for the position he seeks. Declarations for justice of the supreme court and district court judge shall be filed with the secretary of state.

History: En. Sec. 227, Ch. 368, L. 1969.

23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation. (1) On receipt of a declaration, the secretary of state shall make entries in the "Register of Candidates for Nomination" on a page different from entries made for district candidates of political parties.

(2) The secretary of state shall separately arrange, certify, and file the names of judicial candidates, and certify to each registrar the names to be placed on the primary ballot at the same time, and in the same way, that other candidates are certified.

(3) The certificates shall show the names of candidates and number of the judicial office for each. The list shall be separate from lists of candidates appearing under political headings.

History: En. Sec. 228, Ch. 368, L. 1969.

23-4505. Primary ballots — preparation and distribution. (1) The registrars shall arrange, prepare, and distribute primary ballots for judicial offices designated "Judicial Primary Ballots." They shall be arranged as other primary ballots and be without political designation.

(2) The number of judicial primary ballots and sample ballots furnished shall be the same as other primary ballots.

History: En. Sec. 229, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Write-in Candidate

The prior Nonpartisan Judiciary Act did not restrict electors to the privilege of voting only for candidates whose names appeared on the primary judicial ballot, but, though the act was silent as to their right to write in the name of a qualified person to judicial office, they could do so. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4506. Judicial primary ballots. (1) The "Judicial Primary Ballot" shall be furnished to electors in the same manner as other primary ballots.

(2) The number of the judicial primary ballot shall correspond to the number of the elector's regular ballot.

(3) Different terms of office for the same position shall be considered separate offices.

History: En. Sec. 230, Ch. 368, L. 1969.

23-4507. Separate counting and canvassing of judicial ballots—application of general laws. (1) After closing the polls, the election officers shall separately count and canvass judicial ballots, and record and certify them, showing the number of votes cast for each person.

(2) Judicial ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs and unused ballots. Returns shall be made as provided by law.

History: En. Sec. 231, Ch. 368, L. 1969.

23-4508. Nominations—placing names on ballots. (1) Candidates for nomination equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected then all candidates, are nominees for the office.

(2) Candidates who received the highest vote in the primary shall have their names printed on the official ballot for the general election.

(3) No candidate shall have his name on the judicial ballot for the general election unless he was a successful candidate at the primary election.

History: En. Sec. 232, Ch. 368, L. 1969.

23-4509. Tie vote, how decided. (1) In case of a tie vote, the candidates shall appear and cast lots before the secretary of state on the fifth day after the vote is officially canvassed.

(2) If a candidate fails to appear in person or by proxy in writing before 12 noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be printed on the official ballot.

History: En. Sec. 233, Ch. 368, L. 1969.

23-4510. Vacancies among nominees after nomination and before general election, how filled. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If after the primary and before the general election there is no person able or entitled to the office or there are not enough candidates to fill the offices, the governor shall certify to the secretary of state the names of persons qualified for the office equal to twice the number to be elected. The names of those persons nominated by the governor shall be printed on the official ballot.

(3) Nominations made by the governor are not filed too late if filed within ten (10) days after the vacancy occurs. If the ballots have already been printed, stickers may be used to place the names on the ballot.

History: En. Sec. 234, Ch. 368, L. 1969.

23-4510.1. Form of ballot on retention of incumbent supreme court justice. In the event there is no candidate for the office of supreme court justice or chief justice other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (chief) justice (here the name of the incumbent justice is inserted) of the supreme court of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the justice to remain in office. Mark an "x" before the word "NO" if you do not wish the justice to remain in office.)

History: En. Sec. 1, Ch. 22, L. 1973.

Title of Act

An act placing the name of the supreme court justices and district court judges on the ballot in uncontested elections to comply with article VII, section 8(2) of the 1972 Montana constitution.

23-4510.2. Form of ballot on retention of incumbent district court judge. In the event there is no candidate for the office of district court judge in a judicial district of the state other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall judge (here the name of the incumbent judge of the district court is inserted) of the district court of the ..... judicial district of the state of Montana be retained in office for another term in office?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the judge to remain in office. Mark an "x" before the word "NO" if you do not wish the judge to remain in office.)

History: En. Sec. 2, Ch. 22, L. 1973.

23-4511. Unlawful for political party to endorse judicial candidate. A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

History: En. Sec. 235, Ch. 368, L. 1969.

CHAPTER 46

CONVENTIONS TO RATIFY AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

Section
23-4601. Convention for ratification of amendments to United States constitution.
23-4602. Delegates to constitutional convention.
23-4603. Nomination of delegates.
23-4604. Determination of election results.
23-4605. Ballot form.
23-4606. Time for convention of delegates.
23-4607. Quorum—officers—procedure—qualifications.
23-4608. Compensation of delegates and officers.
23-4609. Certificate of result—transmission to secretary of state of United States.
23-4610. Qualifications of petitioners and electors.
23-4611. Federal acts to supersede state provisions concerning amendments.

23-4601. Convention for ratification of amendments to United States constitution. If Congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969.

23-4602. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislative assembly. Each district shall have delegates equal to the number of members it is entitled to in the legislative assembly.

(2) Delegates shall be elected at the next primary or general election after Congress has proposed the amendment, or at a special election called by the governor.

(3) Except as otherwise provided in sections 23-4601 through 23-4611, the election shall be in accordance with the laws for the election of members of the legislative assembly.

History: En. Sec. 237, Ch. 368, L. 1969.

23-4603. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than one hundred (100) voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than thirty (30) days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969.

23-4604. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, and the total votes cast for all candidates "in favor of" ratification and the votes cast for each candidate "opposed to" and the total votes cast for all candidates "opposed to" ratification shall be ascertained;

(2) Candidates receiving the highest number of votes equal to the number of delegates to be elected from the side receiving the greater number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969.

23-4605. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969.

23-4606. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a. m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969.

23-4607. Quorum—officers—procedure—qualifications. A majority of the total number of delegates constitutes a quorum. The convention may choose a president, secretary, and other necessary officers; make rules governing the procedure of the convention; and shall judge the qualifications and election of its members.

History: En. Sec. 242, Ch. 368, L. 1969.

23-4608. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 243, Ch. 368, L. 1969.

23-4609. Certificate of result—transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States.

History: En. Sec. 244, Ch. 368, L. 1969.

23-4610. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969.

23-4611. Federal acts to supersede state provisions concerning amendments. If Congress prescribes how the convention shall be constituted and held by resolution or statute, sections 23-4601 through 23-4610 are inoperative and the convention shall be constituted and held as Congress directs. All state officers are directed to take action to constitute the convention as authorized by Congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969.

Repealing Clause

Section 248 of Ch. 368, Laws 1969 read "Sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through 23-604,

23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R. C. M. 1947 are repealed."

CHAPTER 47

ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section
23-4701 to 23-4729. [Transferred from Title 94.]
23-4730. Statement by candidate as to moneys expended—filing after election—penalty.
23-4731. Accounts of expenditures by political committees and other persons—statement.
23-4732 to 23-4735. [Transferred from Title 94.]
23-4736. Record of statements—copies.
23-4737 to 23-4759. [Transferred from Title 94.]
23-4760. Court having jurisdiction of proceedings.
23-4761 to 23-4775. [Transferred from Title 94.]

23-4701 to 23-4729. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1401 to 94-1429. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
23-4701	94-1401
23-4702	94-1402
23-4703	94-1403
23-4704	94-1404
23-4705	94-1405
23-4706	94-1406
23-4707	94-1407
23-4708	94-1408
23-4709	94-1409
23-4710	94-1410
23-4711	94-1411
23-4712	94-1412
23-4713	94-1413
23-4714	94-1414
23-4715	94-1415
23-4716	94-1416
23-4717	94-1417
23-4718	94-1418
23-4719	94-1419
23-4720	94-1420
23-4721	94-1421
23-4722	94-1422
23-4723	94-1423
23-4724	94-1424
23-4725	94-1425
23-4726	94-1426
23-4727	94-1427
23-4728	94-1428
23-4729	94-1429

23-4730. (10776) **Statement by candidate as to moneys expended—filing after election—penalty.** Every candidate for nomination or election to public office, including candidates for the office of senator of the United States, shall, within twenty (20) days after the election at which he was a candidate, file with the secretary of state if a candidate for senator of the United States, representative in congress, or for any state or district office in a district composed of one or more counties, or for members of the legislative assembly from a district composed of more than one county, but with the county clerk for legislative districts composed of not more than one county, and for county and precinct offices, and with the city clerk, auditor, or recorder of the town or city in which he resides, if he was a candidate for a town, city, or ward office, an itemized sworn statement setting forth in

detail all the moneys contributed, expended, or promised by him to aid and promote his nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character, and all liabilities remaining uncanceled and in force at the time such statement is made, whether such expenditures, promises, and liabilities were made or incurred before, during, or after such election. If no money or other valuable thing was given, paid, expended, contributed, or promised, and no unfulfilled liabilities were incurred by a candidate for public office to aid or promote his nomination or election, or the election of his party candidates, he shall file a statement to that effect within twenty (20) days after the election at which he was a candidate. Any candidate who shall fail to file such a statement shall be fined twenty-five dollars for every day on which he was in default, unless he shall be excused by the court. Twenty (20) days after any such election the secretary of state, or county clerk, city clerk, auditor, or recorder, as the case may be, shall notify the county attorney of any failure to file such a statement on the part of any candidate, and within ten days thereafter such prosecuting officer shall proceed to prosecute said candidate for such offense.

History: En. Sec. 11, Init. Act, Nov. 1912; re-en. Sec. 10776, R. C. M. 1921; Sec. 94-1430, R. C. M. 1947; amd. Sec. 1, Ch. 144, L. 1973; redes. 23-4730 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-1430 in bound Volume Eight.

Amendments

Chapter 144, Laws of 1973, extended the time for filing and for notice of failure to file from fifteen to twenty days after the election.

23-4731. (10777) Accounts of expenditures by political committees and other persons—statement. (1) Every political committee shall have a treasurer, who is a voter, and shall cause him to keep detailed accounts of all its receipts, payments, and liabilities. Similar accounts shall be kept by every person, who in the aggregate receives or expends money or incurs liabilities to the amount of more than fifty dollars ($50) for political purposes, and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination, or election concerned.

(2) Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate, or other person or political party or organization, shall, on demand, and in any event within twenty (20) days after such receipt, expenditure, or incurrence of liability, give such treasurer, agent, candidate, or other person on whose behalf such expense or liability was incurred a detailed verified account thereof. Every payment shall be accounted for by a receipted bill stating the particulars of expense. Every voucher, receipt, and verified account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate, or other person, and shall be preserved for six (6) months after the election to which it refers.

(3) Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars ($50) in any campaign for nomination or election, to aid in the election or defeat of any

candidate or candidates, or party ticket, or measure before the people, shall, within twenty (20) days after the election in which said money or value was expended, file with the secretary of state in the case of a measure voted upon by the people, or of state or district offices for districts composed of one (1) or more counties, or with the county clerk for county offices, and with the city clerk, auditor, or recorder for municipal offices, a verified itemized statement of such receipts and expenditures for every sum paid in excess of five dollars ($5), and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such receipts.

(4) The books of account of every treasurer of any political party, committee, or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction.

History: En. Sec. 12, Init. Act, Nov. 1912; re-en. Sec. 10777, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1969; Sec. 94-1431, R. C. M. 1947; amd. Sec. 2, Ch. 144, L. 1973; redes. 23-4731 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-1431 in bound Volume Eight.

Amendments

Chapter 144, Laws of 1973, extended the time for accounting specified in subsection (2) from fifteen to twenty days after the transaction; and extended the time for filing specified in subsection (3) from fifteen to twenty days after the election.

Bipartisan Organizations

Bipartisan organization to promote the sales tax referred measure was legislative in nature and not political within the meaning of subsection (4) of this section. State ex rel. Nybo v. District Court, — M —, 492 P 2d 1395.

23-4732 to 23-4735. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1432 to 94-1435. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
23-4732	94-1432
23-4733	94-1433
23-4734	94-1434
23-4735	94-1435

23-4736. (10782) **Record of statements--copies.** All statements shall be preserved by the officer with whom they are filed during the term of office to which they relate, and shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of other public records.

History: En. Sec. 17, Init. Act, Nov. 1912; re-en. Sec. 10782, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1943; amd. Sec. 1, Ch. 251, L. 1971; Sec. 94-1436, R. C. M. 1947; redes. 23-4736 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-1436 in bound Volume Eight.

Amendments

The 1971 amendment substituted "by the officer with whom they are filed during the term of office" for "for six months after the election."

23-4737 to 23-4759. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1437 to 94-1459. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
23-4737	94-1437
23-4738	94-1438
23-4739	94-1439
23-4740	94-1440
23-4741	94-1441
23-4742	94-1442
23-4743	94-1443
23-4744	94-1444
23-4745	94-1445
23-4746	94-1446
23-4747	94-1447
23-4748	94-1448
23-4749	94-1449
23-4750	94-1450
23-4751	94-1451
23-4752	94-1452
23-4753	94-1453
23-4754	94-1454
23-4755	94-1455
23-4756	94-1456
23-4757	94-1457
23-4758	94-1458
23-4759	94-1459

23-4760. (10806) **Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section 23-4757, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed, or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R. C. M. 1921; Sec. 94-1460, R. C. M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to section 23-4757 for a reference to section 94-1457.

Compiler's Notes

The previous text of this section may be found under sec. 94-1460 in bound Volume Eight.

23-4761 to 23-4775. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1462 to 94-1476. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
23-4761	94-1462
23-4762	94-1463
23-4763	94-1464
23-4764	94-1465
23-4765	94-1466
23-4766	94-1467
23-4767	94-1468
23-4768	94-1469
23-4769	94-1470
23-4770	94-1471
23-4771	94-1472
23-4772	94-1473
23-4773	94-1474
23-4774	94-1475
23-4775	94-1476

CHAPTER 48

CONSTITUTIONAL CONVENTIONS

Section
23-4801. Question of holding convention submitted at least every 20 years.
23-4802. Ballot—form—contents.

23-4801. Question of holding convention submitted at least every 20 years. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each twentieth year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973.

Title of Act

An act implementing article XIV, section 3 of the 1972 Montana constitution, providing for the submission of the question of whether or not to hold a constitutional convention at least every twenty (20) years.

23-4802. Ballot—form—contents. The ballot submitting the question to the people shall contain the attorney general's explanatory statement and the following:

Pursuant to article XIV, sections 3 and 4 of the Montana constitution, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each twentieth year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR CALLING A CONSTITUTIONAL CONVENTION

☐ AGAINST CALLING A CONSTITUTIONAL CONVENTION

History: En. Sec. 2, Ch. 36, L. 1973.

TITLE 24—ELECTRIC LINES CONSTRUCTION

Chapter
1. Regulation, construction of electric light, heat and power lines, 24-107.

CHAPTER 1—REGULATION, CONSTRUCTION OF ELECTRIC LIGHT, HEAT AND POWER LINES

Section
24-107. Guy insulation.

24-107. (2683) **Guy insulation.** Any guy wire attached to any pole or appliance on which is run, placed, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two (2) strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six (6) feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight (8) feet in a vertical line from the surface of the ground. In short guys in which the two (2) insulators are required, and which will be located at the same point or near each other, two (2) insulators may be coupled in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. A single fiberglass strain insulator may be substituted and used in lieu of the two (2) strain insulators. Such fiberglass strain insulators must have mechanical strength equal to or greater than the guy strand used and must have a wet flash over rating equal to the highest line to line voltage involved in the guying application and must have a dry flash over rating equal to two (2) times the line to line voltage. The above shall not apply to railway electrification, where at least one (1) insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy, and provided further, that in accord with the provisions of the national electric safety code, the above shall not apply to lines in rural areas where a common neutral is used and both primary and secondary circuits and also the guys are grounded to said common neutral and said common neutral has at least four (4) ground connections in each mile in addition to each ground connection at individual services.

History: En. Sec. 7, Ch. 171, L. 1917; re-en Sec. 2683, R.C.M. 1921; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971.

Amendments

The 1971 amendment inserted the fifth and sixth sentences, relating to the use of fiberglass insulators.

24-125. (2701) **National electrical safety code—applies when.**

Cross-References

Public service commission continued as head of department of public service regulation, sec. 82A-1702.

Negligence

Where railroad's communications line installation met or exceeded requirements of national electrical safety code in every instance, there was no such negligence on the part of railroad as would support liability for the death of an invitee from electrical shock and railroad should have been dismissed on motion for summary judgment. State ex rel. Burlington Northern, Inc. v. District Court, — M —, 496 P 2d 1152.

TITLE 25—FEES AND SALARIES

Chapter
1. Fees of state officers, 25-102.
2. Fees of county officers, 25-210, 25-222 to 25-225, 25-229.
3. Fees and salaries of justices of the peace and constables, 25-307, 25-310, 25-311.
4. Jurors' and witnesses' fees, 25-401, 25-403, 25-404, 25-409, 25-410.
5. Salaries of state officers, deputies and employees, 25-501, 25-507.1 to 25-507.10, 25-508.
6. Salaries of county officers, deputies and employees, 25-604, 25-605, 25-609.1.

CHAPTER 1—FEES OF STATE OFFICERS

Section
25-102. Fees of secretary of state.

25-102. (145) **Fees of secretary of state.** The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, except corporate papers, forty cents ($.40) per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be fifty cents ($.50) per page or fraction thereof.

2. to 7. * * * [Same as parent volume.]

8. For filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, five dollars ($5).

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971. Cal. Pol. C. Sec. 416.

Amendments

The 1971 amendment reduced the fee specified at the end of subdivision 1 from 75¢ to 50¢ per page; and added subdivision 8.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section
25-210. Fees for naturalization.
25-222. Penalty for false oath.
25-223. Penalty for failure to pay over fees.
25-224. Penalty for making false report.
25-225. Penalty for sheriff falsely representing his mileage.
25-229. Sheriff falsely representing his expenses for boarding prisoners.

25-210. (4894) **Fees for naturalization.** The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer as provided by section 25-203, and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969.

Amendments

The 1969 amendment substituted "all fees authorized by law" for "a fee of two dollars and fifty cents ($2.50); and no other fee shall be charged for naturalization papers, or for the record thereof."

Effective Date

Section 2 of Ch. 171, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

25-222. (4906) **Penalty for false oath.** Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in sections 94-7-202 and 94-7-203.

History: En. Sec. 4624, Pol. C. 1895; re-en. Sec. 3157, Rev. C. 1907; re-en. Sec. 4906. R. C. M. 1921; amd. Sec. 15, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted the reference to sections 94-7-202 and 94-7-203 for a reference to 94-3801.

25-223. (4907) **Penalty for failure to pay over fees.** Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is guilty of a felony.

History: En. Sec. 4625, Pol. C. 1895; re-en. Sec. 3158, Rev. C. 1907; re-en. Sec. 4907, R. C. M. 1921; amd. Sec. 16, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a felony" for "is punishable as provided in section 94-1502."

25-224. (4908) **Penalty for making false report.** Every officer who makes a false report of the fees received by him is guilty of a felony.

History: En. Sec. 4626, Pol. C. 1895; re-en. Sec. 3159, Rev. C. 1907; re-en. Sec. 4908, R. C. M. 1921; amd. Sec. 17, Ch. 513, L. 1973.

Amendments

The 1973 amendment deleted "as provided in section 94-115" at the end of the section.

25-225. (4909) **Penalty for sheriff falsely representing his mileage.** Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is guilty of a misdemeanor.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R .C. M. 1921; amd. Sec. 18, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a misdemeanor" for "is punishable as provided in sections 94-115 and 94-1517" at the end of the section.

25-227, 25-228. (4886) **Repealed.**

Repeal

Sections 25-227 and 25-228 (Sec. 4605, Pol. C. 1895; Sec. 1, Ch. 81, L. 1919; Secs. 1, 3, Ch. 77, L. 1943; Sec. 1, Ch. 103, L. 1949; Sec. 1, Ch. 131, L. 1951; Sec. 1, Ch. 241, L. 1969), relating to fees allowed sheriffs for the board of prisoners, were repealed by Sec. 4, Ch. 420, Laws 1971. For present law, see sec. 16-2808.

25-229. (4910) **Sheriff falsely representing his expenses for boarding prisoners.** Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his

custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is guilty of a misdemeanor.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R. C. M. 1921; amd. Sec. 19, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a misdemeanor" for "is punishable as provided in sections 94-115 and 94-1517" at the end of the section.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section
25-307. Collection and disposition of fees—itemized statement.
25-310. Fees of justices of the peace in criminal actions.
25-311. Remittance and retention of fees by justices of the peace.

25-303. (4926) Repealed.

Repeal

Section 25-303 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 3, Ch. 55, L. 1921; Sec. 2, Ch. 184, L. 1963), a schedule of fees of justices of the peace in criminal actions, was repealed by Sec. 27, Ch. 491, Laws 1973. For new law, see sec. 25-310.

25-304. (4927) Miscellaneous fees.

Social Security Coverage

Fees collected by salaried justices of the peace for performing marriage service are wages within the meaning of 42 U.S.C. § 409. (Social Security Act). State v. United States, 340 F Supp 666.

25-305, 25-306. (4928, 4929) Repealed.

Repeal

Sections 25-305, 25-306 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 1, Ch. 84, L. 1947; Sec. 5, Ch. 55, L. 1921; Sec. 1, Ch. 175, L. 1949; Sec. 1, Ch. 51, L. 1953; Sec. 1, Ch. 47, L. 1957; Sec. 3, Ch. 184, L. 1963; Sec. 1, Ch. 198, L. 1969), relating to salaries of and retention of fees by justices of the peace, were repealed by Sec. 27, Ch. 491, Laws 1973. For new law, see sec. 25-311.

25-307. (4930) Collection and disposition of fees—itemized statement.

Justices of the peace shall collect the fees prescribed by law for justices of the peace and shall pay the same into the county treasury of the county wherein they hold office, on the first day of each month, to be credited to the contingent fund of the county; and shall also file an itemized statement showing all fees received during the preceding month in connection with his office; said statement shall also state that all fees required by law to be paid in connection with matters pending before him as a justice during the preceding month have been paid to him, and by him paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised, nor has anyone else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 25-304, supra.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R. C. M. 1921; amd. Sec. 9, Ch. 491, L. 1973.

Amendments

The 1973 amendment deleted "in townships having a population of ten thousand people and upwards" following "Justices

of the peace" at the beginning of the first sentence; deleted "except the fees in criminal actions other than for the issuance of search warrants" following "fees prescribed by law for justices of the peace" near the beginning of the first sentence; and made minor changes in style and phraseology.

25-310. Fees of justices of the peace in criminal actions. The following fees shall be collected by justices of the peace which shall be collected from fines and forfeitures received by justices of the peace:

(1) for all services rendered where there is a plea of guilty, or forfeiture of a bond, not vacated, seven dollars and fifty cents ($7.50);

(2) for all services rendered where there is a trial, fifteen dollars ($15).

History: En. 25-310 by Sec. 1, Ch. 289, L. 1973.

Title of Act

An act creating a new section to provide for fees of justices of the peace in criminal actions.

25-311. Remittance and retention of fees by justices of the peace. Justices of the peace shall remit to the county treasurer the fees as set forth in section 25-310; provided however, that in all cases justices of the peace may retain the miscellaneous fees provided for in section 25-304.

History: En. 25-311 by Sec. 1, Ch. 287, L. 1973.

Title of Act

An act creating a new section providing when justices of the peace shall retain or remit fees.

CHAPTER 4—JURORS' AND WITNESSES' FEES

Section
25-401. Jurors' fees.
25-403. Compensation of jurors in courts not of record and at coroner's inquests.
25-404. Witnesses' fees.
25-409. Witnesses in courts not of record.
25-410. Witnesses in criminal actions or coroner's inquests.

25-401. (4933) **Jurors' fees.** Grand and trial jurors shall receive twelve dollars ($12) per day for attendance before any court of record and eight cents (8¢) per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; reen. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased the jurors' fees in courts of record from $10 to $12 per day; and made a minor change in style.

25-403. (4935) **Compensation of jurors in courts not of record and at coroner's inquests.** Jurors in courts not of record, in both civil and criminal actions, shall receive seven dollars and fifty cents ($7.50) per day, but in civil actions the jury must be paid by the party demanding

the jury, and must be taxed as costs against the losing party. Jurors in coroner's inquest shall receive for their services the sum of seven dollars and fifty cents ($7.50) per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971.

Amendments

The 1969 amendment increased jurors' compensation from $3. to $5. a day.

The 1971 amendment increased the jurors' fees from $5.00 to $7.50 per day.

25-404. (4936) **Witnesses' fees.** For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, ten dollars ($10). For mileage in traveling to the place of trial or hearing, each way, for each mile, eight cents ($.08); provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceedings, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased the witnesses' fees from $6 to $10 per day; and made minor changes in style and phraseology.

25-409. (4941) **Witnesses in courts not of record.** Witnesses in courts not of record in civil actions and proceedings shall receive three dollars ($3) for each day's actual attendance, and seven cents ($.07) for each mile actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; amd. Sec. 4, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased witnesses' fees from $1.50 to $3 per day; and made a minor change in style.

25-410. (4942) **Witnesses in criminal actions or coroner's inquests.** Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive three dollars ($3) per day for actual attendance, and seven cents ($.07) per mile for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; amd. Sec. 5, Ch. 332, L. 1971.

Amendments

The 1971 amendment increased witnesses' fees from $1.50 to $3 per day; and made a minor change in style.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section
25-501. Salaries of certain elected state officials.
25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions.
25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period.
25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice.

25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster.
25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports.
25-507.6. Duplicate warrants authorized—charge for loss—when considered lost.
25-507.7. Designation of person to receive warrants upon employee's death—reissuance of warrant in designated person's name.
25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers.
25-507.9. Determination of weekly or hourly pay rate.
25-507.10. Service charges—use of funds so collected.
25-508. Traveling expenses of officers attending conventions.

25-501. Salaries of certain elected state officials. The annual salaries paid to certain elected officials of the state of Montana shall be as follows:

Governor	$25,000
Lieutenant governor	$18,500
Chief justice of the supreme court	$24,000
Justices of the supreme court, each	$22,500
Attorney general	$19,000
State auditor	$15,000
Superintendent of public instruction	$17,500
Railroad commissioner	$14,000
State treasurer	$15,000
Secretary of state	$15,000
Clerk of the supreme court	$11,500

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971; amd. Sec. 4, Ch. 297, L. 1973.

Amendments

The 1969 amendment substituted "certain" for "various" before "elected officials" and increased annual salaries as follows: chief justice from $18,500 to $22,500; justices from $17,000 to $21,000; railroad commissioners from $10,500 to $11,550; and clerk of the supreme court from $9,000 to $11,500.

The 1971 amendment increased the annual salaries of the governor from $23,250 to $25,000; of the chief justice from $22,500 to $24,000; of the other supreme court justices from $21,000 to $22,500; of the attorney general from $15,500 to $19,000; of the state auditor from $10,500 to $15,000; of the superintendent of public instruction from $13,750 to $17,500; of the railroad commissioner from $11,550 to $14,000; of the state treasurer from $10,500 to $15,000; and of the secretary of state from $10,500 to $15,000.

The 1973 amendment inserted the provision for the lieutenant governor's salary.

Cross-References

Classification and compensation of state employees, secs. 59-903 to 59-914.

Salaries of elective and judicial officers, commission to study and recommend, secs. 59-1401 to 59-1404.

25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system, and may make exceptions from the operation thereof for such periods as he determines necessary.

History: En. Sec. 1, Ch. 95, L. 1969.

Title of Act

An act providing for the establishment and operation of a state central payroll system.

25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period. The state central payroll system may provide for the fixing of payroll periods and designated days of the month on which salaried employees shall be paid for the preceding payroll period. Such pay date shall be uniform for all employees of each state agency employed in the same geographic area and shall not be more than ten (10) calendar days following the close of the payroll period.

History: En. Sec. 2, Ch. 95, L. 1969.

25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice. The payroll period of employees of a state agency shall not be changed by inclusion of the agency into the state central payroll system, or by any revision or modification of the system, unless notice of the proposed change has been given to each employee, who will be affected by such change in the form and manner prescribed by the state auditor not less than sixty (60) days prior to the effective date of the change.

History: En. Sec. 3, Ch. 95, L. 1969.

25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster. The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees, but shall not necessarily include emergency appointees, or the equivalent.

History: En. Sec. 4, Ch. 95, L. 1969.

25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports. Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws, rules, and regulations. The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: En. Sec. 5, Ch. 95, L. 1969.

25-507.6. Duplicate warrants authorized—charge for loss—when considered lost. Upon receipt of proof, satisfactory to the state auditor, that a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount, without requiring a bond from the payee and any loss incurred in connection therewith, shall be charged against the account from which the payment was derived. A payroll warrant shall be considered to have been lost if it has been sent to the payee, but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee, or for forwarding to

another state officer or employee for such delivery, and has not been received within such reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969.

25-507.7. Designation of person to receive warrants upon employee's death—re-issuance of warrant in designated person's name. Any person now or hereafter employed by the state may file with his appointing power a designation of a person, who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall re-issue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969.

25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers. An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law. The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor, and on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith, to the state payroll revolving account.

History: En. Sec. 8, Ch. 95, L. 1969.

25-507.9. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks, or 2080 hours.

History: En. Sec. 9, Ch. 95, L. 1969.

25-507.10. Service charges—use of funds so collected. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section shall be deposited to the credit of a revolving fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: En. Sec. 10, Ch. 95, L. 1969.

25-508. (443) Traveling expenses of officers attending conventions. (1) to (5). * * * [Same as parent volume.]

(6) Provided, further, that all county treasurers of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county treasurers held within the state, not

oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973.

Amendments

The 1973 amendment added subsection (6).

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section
25-604. County commissioners to fix salaries of deputies—limitations.
25-605. Salaries of certain county officers.
25-609.1. Commissioners to fix salaries according to salary schedule.

25-604. (4874) **County commissioners to fix salaries of deputies—limitations.** That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided; provided the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; except as herein provided; where any deputy or assistant is employed for a period of less than one (1) year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants, except as herein provided; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office; provided that after this act becomes effective the maximum salary rate per month of any deputy or assistant should not be less than the maximum salary allowed in any month of the year immediately previous to the date this act becomes effective. In fixing the compensation allowed the undersheriff the board must fix the same ninety-five per cent (95%) of the salary of the officers under whom such undersheriff is serving; in fixing the compensation allowed the deputy sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class in which the board must fix the same at not less than seventy-five per cent (75%) nor more than ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving; provided, however, that no deputy sheriff presently employed may be paid less than the compensation he is receiving on the effective date of this act.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; amd. Sec. 1, Ch. 87, L. 1943; amd.

Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971.

Amendments

The 1971 amendment added to the language following the semicolon in the last sentence the exception and the proviso relating to first, second and third class counties; and made a minor change in phraseology.

Conflict with Minimum Wage Act

Because the legislature amended this section the same year it enacted the Minimum Wage Act (41-2301 to 41-2307), it has indicated its intent to keep this section specially enforced; and inasmuch as the time-and-a-half provision of the Minimum Wage Act conflicts with the maximum salary stated by this section, this special section will control the general provision of that act. City of Billings v. Smith, — M —, 490 P 2d 221.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	$3,520	Below $2,000,000	$3,520
3,000 to 3,999	$3,620	$2,000,000 to 2,999,999	$3,620
4,000 to 4,999	$3,700	3,000,000 to 3,999,999	$3,700
5,000 to 5,999	$3,780	4,000,000 to 4,999,999	$3,780
6,000 to 6,999	$3,880	5,000,000 to 5,999,999	$3,880
7,000 to 7,999	$4,130	6,000,000 to 6,999,999	$4,130
8,000 to 8,999	$4,200	7,000,000 to 7,999,999	$4,200
9,000 to 9,999	$4,300	8,000,000 to 9,999,999	$4,300
10,000 to 12,499	$4,370	10,000,000 to 11,999,999	$4,370
12,500 to 14,999	$4,460	12,000,000 to 13,999,999	$4,460
15,000 to 17,499	$4,550	14,000,000 to 15,999,999	$4,550
17,500 to 19,999	$4,630	16,000,000 to 17,999,999	$4,630
20,000 to 24,999	$4,720	18,000,000 to 19,999,999	$4,720
25,000 to 29,999	$4,800	20,000,000 to 22,499,999	$4,800
30,000 to 39,999	$4,890	22,500,000 to 24,999,999	$4,890
40,000 to 49,999	$5,010	25,000,000 to 29,999,999	$5,010
50,000 to 59,999	$5,190	30,000,000 to 34,999,999	$5,190
60,000 to 69,999	$5,370	35,000,000 to 39,999,999	$5,370
70,000 to 79,999	$5,520	40,000,000 to 44,999,999	$5,520
80,000 to 89,999	$5,690	45,000,000 to 49,999,999	$5,690
90,000 to 99,999	$5,870	50,000,000 to 54,999,999	$5,870
100,000 and over	$6,050	55,000,000 to 59,999,999	$6,050
		60,000,000 to 64,999,999	$6,050
		65,000,000 to 69,999,999	$6,050
		70,000,000 to 74,999,999	$6,050
		75,000,000 to 79,999,999	$6,050
		80,000,000 to 84,999,999	$6,050
		85,000,000 to 89,999,999	$6,050
		90,000,000 to 94,999,999	$6,050
		95,000,000 to 99,999,999	$6,050
		100,000,000 and over	$6,050

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars ($400) per year and county sheriffs shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of one thousand two hundred dollars ($1,200) per year. Notwithstanding the above, in each county with a population in excess of thirty thousand (30,000) the county attorney shall receive a salary of sixteen thousand dollars ($16,000) per year.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391, and once by Ch. 474. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment substituted references to section 16-3302 for references to repealed section 32-303; raised all the salary bases in the schedule; and in the final paragraph, inserted "and county sheriffs" before "and county surveyors."

The 1971 amendment raised all the salary bases in the schedule; added the last five items in the schedule headed "Taxable Valuation of County"; and inserted "and county sheriffs" in the proviso to the final paragraph.

Chapter 391, Laws of 1973, deleted "county assessors" following "sheriffs" in both the preliminary clause and final paragraph.

Chapter 474, Laws of 1973, increased the compensation on each level of the schedule by from $460 to $790 for each item; deleted "and county sheriffs" following "county superintendent of schools" near the beginning of the proviso in the final paragraph; and added to the final paragraph the clause giving the sheriff $1,200 extra per year and the final sentence relating to county attorneys in large counties.

DECISIONS UNDER FORMER LAW

Constitutional Limitation

Article V, section 31 of the 1889 constitution absolutely barred increases or decreases in salary during term of office, so that county officers elected or appointed before enactment of the 1969 amendment to this section were not entitled to raises in salaries or emoluments provided thereby. Shubat v. State, 157 M 143, 484 P 2d 278.

25-609. Repealed.

Repeal

Section 25-609 (Sec. 5, Ch. 150, L. 1945; Sec. 1, Ch. 177, L. 1949; Sec. 4, Ch. 222, L. 1953; Sec. 1, Ch. 98, L. 1963), relating to the annual establishment of salaries by the county commissioners, was repealed by Sec. 2, Ch. 306, Laws 1973. For new law, see sec. 25-609.1. Chapter 391, Laws of 1973 purported to amend this section but was void under section 43-515.

25-609.1. Commissioners to fix salaries according to salary schedule. The county commissioners shall, by resolution on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor,

county school superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year.

History: En. Sec. 1, Ch. 306, L. 1973.

Title of Act

An act directing county commissioners to fix salaries of certain county officers annually according to statutory schedules; repealing section 25-609, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 306, Laws 1973 read "Section 25-609, R. C. M. 1947, is repealed."

TITLE 26—FISH AND GAME

Chapter

1. Fish and game commission, director and wardens—creation—powers and duties, 26-101.1, 26-103, 26-104, 26-104.3 to 26-104.9, 26-106, 26-110, 26-110.1 to 26-110.3, 26-115, 26-117 to 26-119, 26-121, 26-123 to 26-125, 26-133, 26-136 to 26-138.
2. Fishing and hunting licenses, 26-201, 26-202.1 to 26-202.3, 26-202.6, 26-204, 26-210, 26-213, 26-215, 26-220 to 26-223, 26-229 to 26-234.
3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.2, 26-307.3, 26-324, 26-332, 26-333, 26-345.
4. Beaver—trapping—license—protection, 26-402.
5. Protection of certain wild birds—sale of confiscated birds and animals, 26-501, 26-501.1, 26-506, 26-509.
8. Miscellaneous provisions, 26-812 to 26-814.
9. Outfitters and guides—taxidermists, 26-908, 26-909, 26-911 to 26-922.
10. Disposal of fines—duties of courts—exceptions from act, 26-1001, 26-1002, 26-1008.
11. Game preserves, migratory bird reservations, 26-1101, 26-1128.
12. Permits for breeding game birds and animals—other regulations, 26-1201, 26-1205 to 26-1212.
13. Fur dealer's license and regulation, 26-1302, 26-1303.
15. Construction and hydraulic projects affecting fish and game, 26-1502, 26-1505, 26-1507, 26-1508.
17. Importation of salmonid fish or eggs, 26-1701 to 26-1705.
18. Endangered species, 26-1801 to 26-1809.

CHAPTER 1—FISH AND GAME COMMISSION, DIRECTOR AND WARDENS—CREATION—POWERS AND DUTIES

Section

26-101.1. Definitions.
26-103. Meetings.
26-104. Powers and duties of commission.
26-104.3. Fixing of general and special seasons and bag and possession limits.
26-104.4. Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food.
26-104.5. Construction and maintenance of fish hatcheries and fish ladders.
26-104.6. Acquisition and sale of lands or waters by commission.
26-104.7. Co-operative research, training, and other projects—educational and biological programs.
26-104.8. Creation of fish and game refuges.
26-104.9. Regulation of use of lands.
26-106. Director of fish and game—powers—duties.
26-110. Qualifications, powers, and duties of wardens.
26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens.
26-110.2. Power of wardens in protection of private property.
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26-115. State fish hatcheries.
26-117. Powers and duties of department pertaining to state fisheries.
26-118. Commission may control state waters for propagation of fish.
26-119. Fish and game commission to procure plans for construction projects.
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26-123. Salaries, per diem and expenses, how paid.
26-124. Reports of director.
26-125. Publication of laws.
26-133. Payments to counties for department-owned land—exceptions.
26-136. Meat of wild animals so killed—disposition.
26-137. Checking stations.
26-138. Inspection of animals and fish at checking station.

26-101. (3650) **Repealed.**

Repeal

Section 26-101 (Sec. 1, Ch. 193, L. 1921; Sec. 1, Ch. 166, L. 1941), creating the fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 82A-2004.

26-101.1. Definitions. Unless the context requires otherwise, in Title 26:

(1) "Department" means the department of fish and game provided for in Title 82A, chapter 20;

(2) "Director" means the director of fish and game provided for in section 82A-2003;

(3) "Warden" means a state fish and game warden;

(4) "Commission" means the state fish and game commission provided for in section 82A-2004.

History: En. 26-101.1 by Sec. 1, Ch. 511, L. 1973.

Title of Act

An act for the codification and general revision of the laws relating to the department of fish and game.

26-102. (3651) **Repealed.**

Repeal

Section 26-102 (Sec. 2, Ch. 193, L. 1921; Sec. 2, Ch. 166, L. 1941; Sec. 1, Ch. 29, L. 1965; Sec. 46, Ch. 177, L. 1965), relating to districts for appointment of members of the fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-103. (3652) **Meetings.** The members of the commission shall hold quarterly or other meetings for the transaction of business, at times and places it considers necessary and proper. The meetings shall be called by the chairman, or by a majority of the commission, and shall be held at the time and place specified in the call for the meeting. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The commission shall keep a record of all the business transacted by it. The chairman and secretary shall sign all orders, minutes, or documents for the commission. The principal offices of the commission and department shall be located in or near Helena and suitable and adequate space therefor together with janitor services, light, heat and water shall be furnished by the state of Montana. Rental shall be charged therefor at a rate not to exceed four dollars ($4) per square foot per year for the total space occupied. Such rental collected shall be deposited to the credit of the state general fund.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman" from the first sentence following "The members of the commission"; inserted "department" near the beginning of the sixth sentence; substituted "in or near Helena" for "near the capitol building in Helena" near the beginning of the sixth sentence; increased the rental rate specified in the seventh sentence from $2.00 to a maximum of $4.00 per square foot per year; deleted a next to last sentence reading "Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings"; and made minor changes in style and phraseology.

26-104. (3653) **Powers and duties of commission.** (1) The commission shall supervise all the wildlife, fish, game, game and nongame birds, and waterfowl, and the game, and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the commission.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, from appropriations, or received by the commission from any other sources are appropriated to and under control of the commission.

(4) It may discharge any appointee or employee of the commission for cause at any time.

(5) It may dispose of all property owned by the state, used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, which is of no further value or use to the state, and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to anyone to carry firearms within this state, except to regularly appointed officers or wardens.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. by Sec. 1, Ch. 157, L, 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; Subsec. (15) amd. by Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 364, and once by Ch. 511. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment added "provided, however, that all drawings for elk permits shall be held in the city or town which has suitable accommodations for the persons who will attend the drawing nearest to the area to be hunted but in no case shall the drawing be held in a city or town more distant than the county seat nearest to the area to be hunted" to the end of subsection (15).

The 1971 amendment inserted "all" before "public fishing reservoirs," "public" before "lakes," and "rivers and streams" in the first paragraph of subsection (26); and inserted "the operation of motor-driven boats" and "lakes, rivers and streams" in two places in the first sentence of the second paragraph of subsection (26).

Chapter 364, Laws of 1973 substituted the last sentence of subsection (15) for the proviso added by the 1969 amendment.

Chapter 511, Laws of 1973 substituted "fish and game account in the earmarked revenue fund" at the end of subsection (5) for "state fish and game fund"; de-

leted subsections (6) to (22) and (24) to (26); renumbered subsection (23) as (6); deleted "who are paid by the state of Montana" from the end of the present subsection (6); deleted a final paragraph; and made minor changes in style, phraseology and punctuation.

26-104.2. Repealed.

Repeal

Section 26-104.2 (Sec. 1, Ch. 106, L. 1971), relating to the authority of the commission to adopt rules governing the use of livestock and motor vehicles during archery season, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-104.3. Fixing of general and special seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animals as defined by section 26-201, and declare areas open to the hunting of deer, antelope, and elk by bow and arrow permit holders, and designate times when only bow and arrows may be used to hunt deer, antelope, and elk in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only, and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles, by archers, during special archery seasons.

(3) It may divide the state into fish and game districts, and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts, and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water, or portions thereof, to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) It may declare certain fishing waters closed to fishing except by persons under thirteen (13) years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under thirteen (13) years of age, at times and in areas the

commission in its discretion considers advisable and consistent with its policies relating to fishing.

History: En. 26-104.3 by Sec. 4, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Drawing for Licenses

The literal language of former subsection (15) of sec. 26-104 did not require that the application process to receive a permit to hunt elk be fulfilled by one personally present at the drawing; rather it merely required that the drawing be held at a particular town. State ex rel. Jones v. District Court, — M —, 488 P 2d 1141.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State ex rel. Nepstad v. Danielson, 149 M 438, 427 P 2d 689.

26-104.4. Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food. The commission may:

(1) Acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals, for propagation, experimental, or scientific purposes.

(2) Provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals.

(3) Use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds. It may appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or nongame birds.

(4) Spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

History: En. 26-104.4 by Sec. 5, Ch. 511, L. 1973.

26-104.5. Construction and maintenance of fish hatcheries and fish ladders. (1) The commission shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The commission may purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(3) The commission may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The commission may spend from fish and game funds, sums necessary for this purpose.

History: En. 26-104.5 by Sec. 6, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Fish Ladder Construction

Mandamus to compel fish pond licensee, in compliance with a statute, to construct fish ladder on diversion dam installed seven years before with approval of fish and game commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. Paradise Rainbows v. Fish and Game Commission, 148 M 412, 421 P 2d 717.

26-104.6. Acquisition and sale of lands or waters by commission. (1) The commission may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The commission may acquire, develop, operate, and maintain acquired lands or waters:

(a) For fish hatcheries, nursery ponds, or game farms;

(b) As lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) For public hunting, fishing, or trapping areas;

(d) To capture, propagate, transport, buy, sell, or exchange any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;

(e) To extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The commission may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for three (3) successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the commission or the director within thirty (30) days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to ten per cent (10%) of the amount bid. The highest bid shall be accepted upon payment of the balance due within ten (10) days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The commission shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the commission. The commission shall convey the lands and waters by deed without cove-

nants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the chairman of the commission. The deed shall be attested by the secretary of the commission, but need not be acknowledged.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973.

26-104.7. Co-operative research, training, and other projects—educational and biological programs. (1) The commission may enter into co-operative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train men for wildlife management. It may enter into co-operative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

History: En. 26-104.7 by Sec. 8, Ch. 511, L. 1973.

26-104.8. Creation of fish and game refuges. (1) The commission may establish and close to hunting, trapping, or fishing, any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them, to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than fifteen (15) days after first publication, at which time and place all interested parties may appear and be heard.

History: En. 26-104.8 by Sec. 9, Ch. 511, L. 1973.

26-104.9. Regulation of use of lands. (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in section 26-104.6.

(2) The commission may adopt and enforce rules governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, water skiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs or at designated areas along the shore of the reservoirs. These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973.

26-105, 26-105.1. (3654) **Repealed.**

Repeal

Sections 26-105, 26-105.1 (Sec. 5, Ch. 193, L. 1921; Sec. 1, Ch. 59, L. 1927; Secs. 1, 2, Ch. 152, L. 1949; Secs. 1, 2, Ch. 6, L. 1951; Sec. 1, Ch. 127, L. 1953; Sec. 1, Ch. 57, L. 1957; Sec. 1, Ch. 238, L. 1965; Sec. 1, Ch. 166, L. 1969), relating to compensation of the commissioners, were repealed by Sec. 58, Ch. 511, Laws 1973.

26-106. (3655) **Director of fish and game—powers—duties.** The director of fish and game shall be the secretary of the commission, attend the meetings of the commission, and keep a record of all of its transactions. The director shall keep an inventory showing the description and value of all property owned by the state and under the administration of the commission. He shall be the administrative agent of the commission and custodian of the property and records of the department. He shall devote all of his time to his official duties and his powers and duties include those of a warden. He is subject to the supervision and control of the commission. The director may, by and with the consent of the commission, establish such department divisions and employ the necessary personnel that may be needed to conduct the work of the department. The director shall be paid a salary fixed by the commission and shall be reimbursed for his actual and necessary expenses incurred while in the performance of his duties, the same to be paid upon proper vouchers from the fish and game account in the earmarked revenue fund.

History: Earlier acts relative to the fish and game warden were Secs. 1949-1979, incl., Rev. C. 1907; these sections together with several acts amendatory thereof were superseded by chapter 193, L. 1921. This section En. Sec. 6, Ch. 193, L. 1921; re-en. Sec. 3655, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1925; amd. Sec. 2, Ch. 59, L. 1957; amd. in part by Sec. 1, Ch. 163, L. 1931, changing the salary of the state fish and game warden; amd. Sec. 1, Ch. 87, L. 1947; amd. Sec. 1, Ch. 81, L. 1951; amd. Sec. 1, Ch. 79, L. 1955; amd. Sec. 11, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted first and second sentences relating to the appointment and qualifications of the director; deleted "and shall maintain his office at the seat of government" from the end of the present third sentence; deleted "and such state fish and game director shall have all the powers and duties which are now or may hereafter be by law conferred upon and delegated to the state fish and game director" from the present fourth sentence; deleted from the present fifth sentence clauses providing for removal of the director for cause after hearing; deleted "and approved by the state board of examiners" after "salary fixed by the commission" in the present seventh sentence; substituted "incurred while in the performance of his duties" for "while away from the seat of government upon official business connected with his office" in the present seventh sentence; deleted from the final sentence a clause limiting the director to $2,000 per year in expenses; substituted "fish and game account in the earmarked revenue fund" for "fish and game fund of the state" at the end of the section; and made minor changes in phraseology, punctuation and style.

Cross-References

Director's position continued in department of fish and game, sec. 82A-2003.

26-106.1, 26-106.2. Repealed.

Repeal

Sections 26-106.1, 26-106.2 (Secs. 1, 2, Ch. 37, L. 1955), relating to the fish and game director and wardens, were repealed by Sec. 58, Ch. 511, Laws 1973.

26-110. Qualifications, powers, and duties of wardens. (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, and fur-bearing animals, fish and game birds, and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the commission with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the commission, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the commission, and make a monthly report to the commission correctly informing the commission of their activities on each day of the preceding month, with regard to the enforcement of the fish and game laws, showing where their duties called them, and what they did, and the reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle out of court violations of fish and game laws.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals and fur-bearing animals at reasonable times and at any location other than a residence or dwelling and, upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals and fur-bearing animals shall exhibit the same, and all thereof, to the warden for such inspection.

History: En. Sec. 10, Ch. 193, L. 1921; re-en. Sec. 3659, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1925; amd. Sec. 12, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "Wardens" for "The deputy state fish and game wardens employed and appointed by virtue of this act" at the beginning of subsection (1); substituted "qualified by their experience" for "persons who have had experience" near the beginning of subsection (1); deleted subsection (4) relating to powers of arrest, search and seizure; redesignated subsections (5) and (6) as (4) and (5); added a new subsection (6); and made minor changes in style, phraseology and punctuation.

Subd. 5

Consent to Improper Tagging

Any consent given by game warden to illegal tagging of killed elk would be outside scope of authority and would have no effect whatever in law. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947.

History: En. Sec. 1, Ch. 85, L. 1969; amd. Sec. 35, Ch. 513, L. 1973.

Title of Act

An act to require state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is permitted, and act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

Amendments

The 1973 amendment substituted the references to sections 94-6-102 and 94-6-203 for references to sections 94-3308 and 94-3309.

26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947.

History: En. Sec. 2, Ch. 85, L. 1969; amd. Sec. 36, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted the reference to sections 94-6-102 and 94-6-203 for a reference to sections 94-3308 and 94-3309.

26-110.3. Powers of wardens—enforcement—search and seizure—arrest. A warden may:

(1) Serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) Search, without a warrant, any tent not used as a residence, boat, vehicle, box, locker, basket, creel, crate, game bag, package, or their contents, upon probable cause to believe that any fish and game law or commission rule, for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals, has been violated;

(3) Search, with a search warrant, any dwelling house or other building;

(4) Seize game, fish, game birds, and fur-bearing animals, and any parts of them, taken or possessed in violation of the law or the rules of the commission;

(5) Seize and hold, subject to law or the orders of the commission, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(6) Arrest, in accordance with Title 95, chapter 6, a violator of a fish and game law or rule of the commission, violation of which is a misdemeanor;

(7) Exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the commission, and judgments obtained for violation of those laws or rules.

History: En. 26-110.3 by Sec. 13, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Confiscation of Illegally Killed Game

Under sec. 26-110, subdivision (4) (deleted by Ch. 511, Laws of 1973), illegally killed elk, tagged improperly in that one tag was not punched on month and day of kill and other was not filled in with name and address of hunter and county of kill, were subject to confiscation by fish and game commission. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-111. (3660) **Oath of state fish and game director and wardens.**

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

26-115. (3664) **State fish hatcheries.** The director has general supervision over all fish hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. Distribution shall be under the direction of the department subject to an official order of the director. The director may exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965; amd. Sec. 14, Ch. 511, L. 1973.

Amendments

The 1973 amendment inserted "fish" in the first sentence; deleted "and shall with the consent and approval of the commission appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist" from the end of the first sentence; substituted "the department" for "said superintendent of fisheries" in the third sentence; and made minor changes in style, phraseology and punctuation.

26-116. (3665) **Repealed.**

Repeal

Section 26-116 (Sec. 16, Ch. 193, L. 1921; Sec. 9, Ch. 192, L. 1925; Sec. 5, Ch. 59, L. 1927; Sec. 1, Ch. 86, L. 1947; Sec. 3, Ch. 81, L. 1951), relating to the salary of the superintendent of state fisheries, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-117. (3666) **Powers and duties of department pertaining to state fisheries.** The department has full control of all state fish hatcheries and is responsible for their construction, maintenance, and operation. All that construction work done under contract or otherwise, shall be done under control and supervision of the director. The department shall administer the taking and collecting of all spawn, the hatching of all spawn and eggs, and the rearing, propagation, and distribution of fry, fingerlings, and fish.

The department may purchase as many eyed eggs as are necessary to keep the hatcheries of the state supplied with eggs and in full operation. The department shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply the hatcheries, and for that purpose may build, equip, and use fish traps and nets at any time of the year in all public waters. The department may purchase the eyed eggs of fish not propagated in this state for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R. C. M. 1921; amd. Sec. 10, Ch. 192, L. 1925; amd. Sec. 4, Ch. 81, L. 1951; amd. Sec. 15, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the superintendent of state fisheries; deleted "with approval of state fish and game warden" following "the department has" in the first sentence; and made minor changes in style and phraseology.

26-118. (3667) **Commission may control state waters for propagation of fish.** The commission may control the waters of any lake, pond, or stream, which lies wholly within the limits of land owned by the state, so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the commission, the chairman of the commission shall notify the department of state lands that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed. The department of state lands shall make that entry upon its books and maps as may serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of state lands shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is so claimed. This right may not continue for more than one year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the commission may be terminated upon giving sixty (60) days' notice of the termination to the chairman of the commission.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R. C. M. 1921; amd. Sec. 16, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "From and after the passage of this act" from the beginning of the first sentence; substituted references to the department of state lands for references to the state land agent in the second, third and fourth sentences; and made minor changes in style, phraseology and punctuation.

26-119. (3668) **Fish and game commission to procure plans for construction projects.** It shall be the duty of the state fish and game commission of the state of Montana to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars ($1,000) but less than five thousand dollars ($5,000) and said commission shall cause said project to be constructed, but in accordance with such plans and specifications, by contract, said contract to be let after publishing a notice stating the time and place

of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two (2) weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said project is to be constructed, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the commission, or some member of the commission. The commission may contract for construction projects estimated to cost one thousand dollars ($1,000) or less without providing for plans or specifications, notice, competitive bidding or performance bonds.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R. C. M. 1921; amd. Sec. 1, Ch. 186, L. 1969.

Amendments

The 1969 amendment substituted "construction projects" for "buildings" where the references appear, inserted "but less than five thousand dollars ($5,000)" in the first sentence, inserted the provision that only one bid need be received, and added the last sentence.

Effective Date

Section 2 of Ch. 186, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 3, 1969.

26-120. (3669) **Repealed.**

Repeal

Section 26-120 (Sec. 20, Ch. 193, L. 1921), an obsolete section transferring funds of former governmental units to the state fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 26-121.

26-121. State fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the commission from any other state source, shall be turned over to the state treasurer, and placed by him in the earmarked revenue fund to the credit of the commission. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the commission.

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the commission under the terms of this title. Those moneys shall be spent for those purposes, by the commission, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R. C. M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945;

amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted from subsection (2) a proviso requiring that purchases be made through the state purchasing agent; deleted from subsection (3) a first sentence which read "The fish and game fund is abolished"; and made numerous minor changes in style, phraseology and punctuation.

26-123. (3672) **Salaries, per diem and expenses, how paid.** All salaries, per diem, expenses, and claims incurred by the commission, or a person appointed or employed by them, shall be paid out of fish and game moneys in the earmarked revenue fund, upon warrants properly drawn on those funds. The aggregate of all salaries, per diem, expenses, and claims presented for payment shall not exceed at any time the total amount of fish and game moneys in that fund. The commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all wardens shall be approved by the director before they are paid. The salary, per diem, or expenses of an employee employed in the propagation or distribution of fish shall be approved by the director before they are paid. All items of expense, amounting to more than one and one-half dollars and incurred by anyone employed in the state fish and game department, shall be evidenced by a proper voucher or receipt before they are approved or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en Sec. 3672, R. C. M. 1921; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted references to moneys in the earmarked revenue fund for references to state fish and game funds; substituted "director" for "superintendent of state fisheries" in the next to last sentence; and made minor changes in style and phraseology.

26-124. (3673) **Reports of director.** The director shall before June 1 of each year, make a written report to the commission of the operation of the department during the year ending the preceding April 30.

History: En. Sec. 24, Ch. 193, L. 1921; re-en. Sec. 3673, R. C. M. 1921; amd. Sec. 6, Ch. 81, L. 1951; amd. Sec. 9, Ch. 93, L. 1969; amd. Sec. 19, Ch. 511, L. 1973.

Amendments

The 1969 amendment substituted "director" for "warden" and substituted the reference to the reporting requirements of section 82-4002 for provisions detailing contents of report to be made to governor in every even-numbered year.

The 1973 amendment provided that reports are to be made before June 1 as opposed to "on or before the first day of June"; deleted "and the state fish and game commission shall thereafter report as provided in section 2 of this act" from the end of the section.

26-125. (3674) **Publication of laws.** As soon as practicable after the adjournment of each session of the legislature, the director in co-operation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of the compilation, and properly index them. Copies of the compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. The director shall distribute to justices of the peace, wardens, and other officers and persons empowered to issue licenses for hunting, fishing, and trapping, a supply of the compilation sufficient to permit one copy to be given anyone desiring a copy. The expense incurred in printing the

laws shall be paid out of fish and game moneys in the earmarked revenue fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R. C. M. 1921; amd. Sec. 20, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" near the beginning of the first and third sentences; substituted "wardens" for "deputy fish and game wardens" near the beginning of the third sentence; substituted "fish and game moneys in the earmarked revenue fund" at the end of the section for "state fish and game fund"; and made minor changes in style, phraseology and punctuation.

26-133. Payments to counties for department-owned land—exceptions. The director shall, before October 15 of each year, send a voucher to the treasurer of each county in which the department owns any lands. The voucher shall describe the lands and state the number of acres in each parcel. The voucher shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. A county treasurer receiving a voucher shall execute it and return it to the director, who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant in the amount shown on the voucher, payable to the county and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the state fish and game commission. No voucher or payment may be made to a county in which the department owns less than one hundred (100) acres. No voucher or payment may be made to a county for lands owned by the department for game bird farm or fish hatchery purposes or lands administered with money from the general fund.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" in the first and fourth sentences; deleted "on or" before "before the 15th day of October" near the beginning of the first sentence; deleted "acquired by it for its purposes as provided by law" from the end of the first sentence; added "or lands administered with money from the general fund" at the end of the section; and made minor changes in style and phraseology.

26-135. Wild animals damaging property, etc.

Discretion of Commission

Fish and game commission cannot be mandated to permit landowner to kill elk to protect his property since, although statute compels commission to investigate property damage upon complaint, it confers discretion to act, one exercise of which is taking no action. State ex rel. Sackman v. State Fish and Game Commission, 151 M 45, 438 P 2d 663.

26-136. Meat of wild animals so killed—disposition. The meat of all animals killed or destroyed pursuant to section 26-135 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, or the department of social and rehabilitation services. The department shall provide transportation and distribution of the meat.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973.

Amendments

The 1973 amendment inserted "pursuant to section 26-135" in the first sentence; substituted "the department of social

and rehabilitation services" for "welfare department" at the end of the first sentence; and made minor changes in style, phraseology and punctuation.

26-137. Checking stations. The department of fish and game is authorized to establish checking stations where deemed necessary to inspect licenses of hunters and fishermen and to inspect any game animals, fish or fur-bearing animals in the possession of hunters and fishermen.

History: En. Sec. 1, Ch. 270, L. 1973.

Title of Act

An act authorizing the department of fish and game to establish checking stations and requiring hunters and fishermen to stop at such stations and report game in their possession.

26-138. Inspection of animals and fish at checking station. Every person, upon the request of the director, or his authorized representative, or of any game warden, shall produce for inspection any current fish and game license which has been issued to such person and shall produce for inspection any game animals, birds, fish or fur-bearing animals in his possession. Hunters or fishermen entering or leaving areas for which checking stations have been established must stop and report if a checking station is on the hunter's or fishermen's route of travel, to or from the hunting or fishing area. Failure to stop and report at a checking station, when personnel are on duty, shall constitute a misdemeanor.

History: En. Sec. 2, Ch. 270, L. 1973.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section

26-201. Definitions.
26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses.
26-202.2. Special licenses—tagging of carcasses of game animals.
26-202.3. Defining resident.
26-202.6. Nonresident one (1) day fishing license (Class B-4).
26-204. Application for license.
26-210. Bounty claims for wild animals—approval and payment.
26-213. Carrying and exhibiting license.
26-215. Exemption from general provisions.
26-220. License agents—appointment.
26-221. Bond of license agent—preferred claim of state for license money.
26-222. Compensation—duties.
26-223. Appointments nontransferable—revocation—oaths.
26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license.
26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration.
26-231. Unlawful sales of hunting, fishing or trapping licenses.
26-232. Misdemeanor—penalty.
26-233. Disposition of fees.
26-234. Portions of fees used to purchase recreational facilities.

26-201. (3681) **Definitions.** For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, wolverine, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

Wild buffalo. Buffalo or bison which have not been reduced to captivity.

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; Sec. 1, Ch. 189, L. 1971; amd. Sec. 1, Ch. 167, L. 1973.

Amendments

Chapter 46, Laws of 1971, added "and all species of the genus acipenser (sturgeon)" to the definition of game fish; and made a minor change in phraseology.

Chapter 189, Laws of 1971, transferred mountain lion from the predatory animals paragraph to the game animals paragraph and made minor changes in punctuation and style.

The 1973 amendment deleted bison or buffalo from the definition of game animals; and added the final paragraph defining wild buffalo.

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dol-

lars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2). * * * [Same as parent volume.]

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5 Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7). * * * [Same as parent volume.]

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize

the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) and (10). * * * [Same as parent volume.]

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) and (13) * * * [Same as parent volume.]

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) * * * [Same as parent volume.]

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973.

Compiler's Notes

This section was amended five times in 1973, once by Ch. 110, once by Ch. 139, once by Ch. 167, once by Ch. 261, and once by Ch. 408. None of the admendatory acts referred to or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all five amendments.

Amendments

The 1969 amendment inserted "a Class A-1 license and any one of" before "the following" in subsection (3) and revised subsection (14) by substituting "and hunt game birds * * * game commission" for "without a Class A license and hunt game birds without a Class A-1 license. He shall

carry proof of age in lieu of the license" in subdivision (a), by substituting the provisions of subdivision (b) for "A child residing at the Montana children's center at Twin Bridges and the committed resident of the Montana training center at Boulder will be entitled to fish without a license. He shall carry a written statement by the superintendent of the center in lieu of the license," by inserting the provisions of subdivision (c), and by designating former subdivisions (c) to (f) as (d) to (g).

The 1971 amendment inserted in subsection (4) the provisions for class A-6 licenses; deleted from the end of subsection (4) a sentence reading "Any holder of a class A-3, A-4, or A-5 license shall further be entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" increased the resident grizzly bear fee specified in subsection (11) from one dollar to five dollars; increased the nonresident grizzly bear fee from $25.00 to $35.00; inserted in subsection (11) the provision relating to black or brown bear fees; deleted from the end of subsection (11) a sentence reading "Any holder of a special license as herein provided shall be further entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" and inserted the reference to class A-6 licenses in the first sentence of subsection (16).

Chapter 110, Laws of 1973 inserted "Except as herein provided" at the beginning of the first paragraph of subsection (6); and added the second paragraph to subsection (6).

Chapter 139, Laws of 1973 added subsections (17) and (18).

Chapter 167, Laws of 1973, deleted the clause under subsection (11) which provided for bison or buffalo licenses.

Chapter 261, Laws of 1973, reduced the age specified in the first sentence of subdivision (14) (a) from sixty-five to sixty-two years.

Chapter 408, Laws of 1973, increased license fees in subsection (1) from $4.00 to $5.00, in subsection (5) from $15 to $20, and in subsection (8) from $5.00 to $10.

Effective Date

Section 2 of Ch. 110, Laws of 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

Subd. 4

Tagging Game Killed by Another

Tagging of game animal that someone else has killed or so far brought under control that one can walk up to it and cut its throat is not method of acquiring ownership contemplated by statute authorizing licensed hunter to pursue, hunt, shoot and kill game animal and then to possess carcass with result that person tagging illegally killed elk is not entitled to possession. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.2. Special licenses—tagging of carcasses of game animals. (1) Special licenses authorized to be issued under the general powers of the department of fish and game may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a grizzly bear, moose, mountain goat or mountain sheep license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the department of fish and game before or at the time application is made. It is further provided that any person who has received a special license for elk shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the department reapplication may be

made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of carcasses of game animals. Every license issued by the department authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers, as the department shall prescribe, and when any person should take or kill any game animal under such license, such person shall immediately thereafter cut out, from the tag, coupon or other marker, the date the animal was killed or taken and attach the tag, coupon or other marker to said animal, completely filled out with the name of the license holder, his address, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored and transported. Any person who should kill any game animal by authority of any license issued for the killing of such game animal, and shall fail or neglect to cut out day and month of kill or provide such other information as is required and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said game animal or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said game animal or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 167 and once by Ch. 195. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment deleted "or antelope" after "deer" in the last sentence of subsection (2) and rewrote the provisions of subsection (3) to substitute references to "game animal" for "deer, elk, moose or antelope" and to require the date and month of kill to be cut out of the game tag.

The 1971 amendment inserted "grizzly bear" in the first and second sentences of subsection (2).

Chapter 167, Laws of 1973, deleted references to bison or buffalo licenses from the first and second sentences of subsection (2).

Chapter 195, Laws of 1973, substituted "department of fish and game" for "fish and game commission" in subsections (1) and (2); substituted "department" for "commission" in subsections (2) and (3); and inserted "mountain goat" in two places in subsection (2).

Effective Date

Section 2 of Ch. 72, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Subd. 3

Tagging Game Killed by Another

Under statute requiring tagging, word "take" does not mean that one can tag animal someone else has killed, so that if one person illegally killed elk another person cannot gain ownership by tagging it and ownership of elk remains in state. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1). * * * [Same as parent volume.]

(2) Any person who has been a resident of the state of Montana, as defined in section 83-303, for a period of six (6) months immediately prior to making application for said license shall be eligible to receive a resident hunting or fishing license.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963; amd. Sec. 1, Ch. 33, L. 1967; amd. Sec. 1, Ch. 37, L. 1967; amd. Sec. 1, Ch. 283, L. 1973.

Amendments

The 1973 amendment substituted "person" for "citizen of the United States of America" at the beginning of subdivision (2).

26-202.6. Nonresident one (1) day fishing license (Class B-4). Any person not a resident as defined in section 26-202.3, R.C.M. 1947, who is a holder of a valid wildlife conservation license, upon payment of the sum of two dollars ($2) to any agent of the state fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a one (1) day nonresident fishing license, which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the commission for one (1) calendar day as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969; amd. Sec. 2, Ch. 408, L. 1973.

Title of Act

An act to provide for a one (1) day nonresident fishing license to be issued by the state fish and game commission.

Amendments

The 1973 amendment increased the license fee from $1.00 to $2.00.

Effective Date

Section 2 of Ch. 117, Laws 1969 read "This act shall be in full force and effect from and after May 1, 1969."

26-204. (3684) **Application for license.** Such license shall be procured from the state fish and game director, or any state fish and game warden, or any authorized agent of the state fish and game director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data or descriptions as may be required by the commission. The statements made by the applicant shall be subscribed to before the officer or agent issuing said license.

It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it, and any license issued pursuant to it, null and void. Any person violating any provision of this statute is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R. C. M. 1921; amd. Sec. 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, L. 1969.

Amendments

The 1969 amendment substituted "director" for "warden" and deleted "deputy" before "state fish and game warden" in the first sentence and deleted "and sworn" after "subscribed" in the last sentence of the first paragraph and rewrote the second paragraph which read: "Any person who shall swear or affirm to any false statement in the application for a hunting or fishing license, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section 26-324."

Effective Date

Section 2 of Ch. 157, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

26-209. (3685.4) **Repealed.**

Repeal

Section 26-209 (Sec. 5, Ch. 41, L. 1935), saving existing provisions for Class B nonresident fishing licenses, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-210. Bounty claims for wild animals—approval and payment. (1) The commission shall pay bounty claims for wild animals which have been filed with and approved by the board of livestock. The commission shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals, as the bounty claims are presented, not exceeding seven thousand five hundred dollars ($7,500) per calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the commission for rejection or approval. If the claim or certificate is rejected it shall be returned by the commission to the board of livestock. If approved, it shall be delivered to the department of administration for allowance or disallowance. Nothing in this section takes from the commission the exclusive power to administer the fish and game moneys at their discretion.

(3) If the department of administration allows the claim, it must send it to the auditor. The auditor must draw his warrant on the state fish and game moneys in the earmarked revenue fund for the amount approved in favor of the claimant, in the order in which the claim is approved.

History: En. Sec. 2, Ch. 174, L. 1939; amd. Sec. 23, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "by the board of livestock" for "in the office of the livestock commission" throughout the section; substituted "department of administration" for "state board of examiners" near the end of the third sentence in subsection (2) and in the first sentence of subsection (3); deleted "or certificate, they must endorse thereon over their signatures, 'Approved for the sum of ——— dollars,' and" following "department of administration allows the claim" in the first sentence of subsection (3); substituted "fish and game moneys in the earmarked revenue fund" in the second sentence of subsection (3) for "fish and game funds"; deleted "or, his assigns" following "in favor of the claimant" in the second sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

26-213. (3689) **Carrying and exhibiting license.** It is unlawful and a misdemeanor punishable as provided by section 26-324 for any person to whom a license or permit has been issued to fish for or take any fish, or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, or trap, or take any fur-bearing animal in this state unless at the time he has the license or licenses, or permit, in his possession. It is unlawful to refuse to exhibit a license or permit for inspection to a warden or other officer requesting to see it.

History: En. Sec. 9, Ch. 238, L. 1921; re-en. Sec. 3689, R. C. M. 1921; amd. Sec. 10, Ch. 59, L. 1927; amd. Sec. 4, Ch. 224, L. 1947; amd. Sec. 24, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "a warden" for "any deputy state fish and game warden" at the end of the second sentence; and made minor changes in style and phraseology.

26-215. (3691) **Exemption from general provisions.** (a) The provisions of the fish and game laws shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory mammals, prairie dogs, ground squirrels, jackrabbits, gophers, or house sparrows, crows, blackbirds, magpies, starlings and rock doves, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time except as specifically set forth herein and enforced pursuant to section 26-324.

(b) It shall be illegal to hunt jackrabbits on private land with artificial light unless written permission of the landowners, lessee or agent is obtained.

(c) * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971.

Amendments

The 1971 amendment substituted "predatory mammals" for "predatory animals" in subsection (a); substituted "house sparrows" for "English sparrows" in subsection (a); deleted "hawks, fish ducks, blue heron, snow owls, great grey owls, great horned owls," "kingfishers," and "jays and eagles" from subsection (a); inserted "starlings and rock doves" in subsection (a); and made a minor change in phraseology.

26-220. License agents—appointment. The director may appoint license agents as needed to sell state hunting and fishing licenses, according to rules adopted by the commission.

History: En. Sec. 1, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 25, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden"; and made minor changes in phraseology.

26-221. Bond of license agent—preferred claim of state for license money. (1) An appointed license agent shall furnish a corporate surety bond of one thousand dollars ($1,000), or in an amount equal to the value of the licenses received for distribution, the amount to be fixed at the discretion of the director. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all moneys received from the sale of hunting and fishing licenses. The license agent shall properly account for all unsold licenses annually on April 1, or at any other time at the request of the director.

(2) All money received for the sale of licenses at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all moneys owed the state.

History: En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 26, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state

fish and game warden" at the end of the first and third sentences in subsection (1); and made minor changes in style, phraseology and punctuation.

26-222. Compensation—duties. License agents, except salaried employees of the department, shall receive for all services rendered the sum of fifteen cents (15¢) for each license issued. On or before the 10th day of each month each license agent shall submit to the department all duplicates of each class of licenses sold during the preceding month and shall accompany the duplicate licenses with all moneys received for the sale of the licenses, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open at all reasonable hours to inspection by the commission, the director, the wardens, or the legislative auditor.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959; amd. Sec. 27, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "employees of the department" for "deputy fish and game wardens (state fish and game wardens)" in the first sentence; substituted "department" for "state fish and game warden (director)"; and substituted "the director, the wardens, or the legislative auditor" for "the state fish and game warden (director), or his deputies (wardens), or the state examiner" at the end of the third sentence.

26-223. Appointments nontransferable — revocation — oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the state fish and game director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969.

Amendments

The 1969 amendment rewrote this section to restrict the operation of license agents to a single business location as stated in the certificate of appointment.

Effective Date

Section 2 of Ch. 7, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

26-224. Repealed.

Repeal

Section 26-224 (Sec. 5, Ch. 88, L. 1947; Sec. 1, Ch. 156, L. 1949), relating to prior appointments of license agents, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license. It shall be unlawful for any person or persons to purchase any hunting, fishing or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: En. Sec. 1, Ch. 172, L. 1969.

Title of Act

An act requiring persons purchasing hunting, fishing and trapping licenses to possess a wildlife conservation license, and providing that fees for such purchases be deposited with the state treasurer in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121, R. C. M. 1947.

26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration. A wildlife conservation license shall be sold upon written application in such form and containing his name, age, occupation, place of residence, post-office address, length of time in the state of Montana, whether a citizen of the United States or an alien and present a driver's license or other identification to substantiate such information and shall be subscribed by the applicant. Hunting, fishing or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such regulations as the commission may prescribe. Residents, as defined by section 26-202.3, may purchase a resident's license for a fee of twenty-five cents ($.25) and all others a nonresident's license for a fee of one dollar ($1). Licenses issued shall be void after the thirtieth (30th) day of April next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969.

26-231. Unlawful sales of hunting, fishing or trapping licenses. It shall be unlawful for any license agent to sell any hunting, fishing or trapping license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969.

26-232. Misdemeanor—penalty. Any person who shall subscribe to any false statement in application for a wildlife conservation license or violate any other provision of this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in section 26-324.

History: En. Sec. 4, Ch. 172, L. 1969.

26-233. Disposition of fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121.

History: En. Sec. 5, Ch. 172, L. 1969. **Effective Date**

Section 6 of Ch. 172, Laws 1969 read "This act is effective May 1, 1969."

26-234. Portions of fees used to purchase recreational facilities. One dollar ($1) of the fee for Class A resident fishing license; one dollar ($1) of the fee for Class B-4 nonresident one (1) day fishing license, five dollars ($5) of the fee for the Class B-3 nonresident six (6) day fishing license; and five dollars ($5) of the fee for the Class B nonresident fishing license shall be used for the purchase of fishing accesses, stream, river and lake frontages and the land deemed necessary to provide recreational use thereof. The funds raised under this section are not to supplement any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river or lake frontages and the land deemed necessary to provide recreational use thereof, but serve in addition to those funds.

History: En. Sec. 3, Ch. 408, L. 1973. **Title of Act**

An act amending section 26-202.1 and

section 26-202.6, R. C. M. 1947, relating to fees for resident and nonresident fishing licenses; providing an effective date.

Effective Date

Section 4 of Ch. 408, Laws 1973 read "This act shall be in effect for license year beginning April 30, 1974, and thereafter for subsequent license years."

CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME—OPEN AND CLOSED SEASONS

Section
26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
26-301.1. Wild buffalo protected.
26-302. Big game hunters to wear colored garments.
26-303.5. Use of dogs for hunting mountain lion.
26-306. Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation.
26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.
26-307.2. Policy as to grizzly bear.
26-307.3. Regulatory powers of commission as to grizzly bear.
26-324. Penalty.
26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.
26-333. Record of seining licenses—refusal of license.
26-345. Fire danger—area closed to hunting and fishing.

26-301. (3694) **Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** (1) * * * [Same as parent volume.]

(2) (a) and (b). * * * [Same as parent volume.]

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) * * * [Same as parent volume.]

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) * * * [Same as parent volume.]

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open

season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 124 and once by Ch. 305. Neither amendatory act mentioned

or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment by chapter 90 inserted provision in subsection (7) permitting the commission to declare open seasons for taking walleyed pike, sauger and northern pike with spear or gig.

The 1969 amendment by ch. 201 inserted a subsection (8) reading: "It shall be unlawful for anyone to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up or harass game animals, game birds or fur-bearing animals"; renumbered previous subsection (8) as (9); and made a minor change in punctuation.

The 1971 amendment inserted "and stock-killing mountain lions" in two places in subsection 5.

Chapter 124, Laws of 1973 added subsection (10).

Chapter 305, Laws of 1973, substituted the present subsection (8) for the subsection inserted by Ch. 201, Laws of 1969.

Effective Date

Section 2 of Ch. 201, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

26-301.1. Wild buffalo protected. It is unlawful to hunt, shoot, kill, capture or possess wild buffalo except as permitted by rules adopted by the fish and game commission.

History: En. Sec. 4, Ch. 167, L. 1973.

Title of Act

An act to amend sections 26-201, 26-202.1 and 26-202.2, R. C. M. 1947, by eliminating bison or buffalo as a big game animal; providing for protection of wild buffalo; defining wild buffalo.

26-302. Big game hunters to wear colored garments. (1) It shall be unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without such person wearing as exterior garments on his person a total of not less than four hundred (400) square inches of hunter orange material.

(2) "Hunter orange" means a daylight fluorescent orange color.

This section shall not apply to any person hunting with a bow and arrow in an area which at the time is open to big game hunting with a bow and arrow only.

(3) Failure of any person to comply with this section shall not be treated as evidence of contributory negligence in a civil action for injury to him or for his wrongful death.

History: En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971.

Amendments

The 1971 amendment designated the former section as subsection (1); inserted "or to accompany any hunter as an outfitter or guide" in subsection (1); substituted "on his person a total of not less than four hundred (400) square inches of hunter orange material" for "a cap or hat, shirt jacket, coat or sweater of a bright red, orange or yellow color" in subsection (1); added subsections (2) and (3); and made minor changes in style and phraseology.

Effective Date

Section 1(4) of Ch. 305, Laws 1971 read "This act shall become effective May 1, 1972."

26-303.2. Repealed.

Repeal

Section 26-303.2 (Sec. 2, Ch. 229, L. 1965), prohibiting nonresident hunting of big game animals unless accompanied by a licensed resident, is repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972. For present law, see sec. 26-909.

26-303.5. Use of dogs for hunting mountain lion. The Montana fish and game commission shall have authority to allow and regulate the use of dogs for hunting mountain lion.

History: En. Sec. 1, Ch. 184, L. 1971.

Title of Act

An act to allow and regulate the use of dogs for hunting mountain lion.

26-306. (3695) **Private artificial lake or pond—stocking—license—bond—reports—restrictions on catching fish—penalty for violation.** (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock his fish pond with fry procured from any lawful source. The commission may designate the species of fish which may be released in the pond when there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, he shall furnish a corporate surety bond to the state for five hundred dollars ($500), conditioned to the effect that he will not sell fish or spawn from any of the public waters of this state, and also conditioned to the effect that he will report to the director the quantity of fish, fish eggs, and spawn taken from the lake or pond. This report shall be made under oath annually during the month of January. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold, and the date of transaction.

(2) "Artificial lake or pond" as used in this section does not include a natural pond or body of water created by natural means, nor any portion of the stream bed or lake bed thereof. It includes only bodies of water created by artificial means or diversion of water which do not exceed five hundred (500) acres of surface area.

(3) A person violating this section is guilty of a misdemeanor and shall be punished as provided in section 26-324.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R. C. M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state fish and game warden" twice in subsection (1); and made minor changes in style, phraseology and punctuation.

Artificial Ponds

Fish and game commission abused discretion in failing to renew previously issued licenses for one pond created by diverting water from creek to channel dry for forty years and for another pond created by spring-fed creek arising and flowing into Yellowstone River entirely on licensee's property since ponds were entirely artificial and man-made within meaning of statute. Paradise Rainbows v. Fish and Game Commission, 148 M 412, 421 P 2d 717.

26-307. (3696) **Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.** (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear and mountain lion, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any

part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except black and brown bear and mountain lion, which need have removed and taken from the carcass only the head or the hide of such bear or mountain lion, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the state fish and game commission may demand for scientific purposes. All parts of grizzly bear demanded by the commission for scientific purposes must be delivered to an officer or employee of the commission for inspection as soon as possible after removal and the commission shall return to the licensee any bone structure and skull within one year upon written request. The hide shall be returned immediately.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973.

Amendments

The 1969 amendment added the provisions in subsection (1) relating to delivery of grizzly bear parts to the commission.

The 1973 amendment inserted references to mountain lions in three places in the first sentence of subsection (1).

Effective Date

Section 4 of Ch. 134, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing a penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State ex rel. Nepstad v. Danielson, 149 M 438, 427 P 2d 689.

26-307.2. Policy as to grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969.

Title of Act

An act to protect, conserve and manage grizzly bear as a rare species of Montana wildlife, to provide the state fish and game commission with authority to promulgate such regulations as may be necessary for the protection, conservation and management of grizzly bear, and to amend section 26-307, R. C. M. 1947, by providing that such parts of grizzly bear as the commission shall demand must be removed and delivered to an officer or employee of the commission.

26-307.3. Regulatory powers of commission as to grizzly bear. The state fish and game commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls and hides; possession limits; and requirements for transportation, exportation and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969.

26-324. (3706) **Penalty.** A person violating any state law pertaining to fish and game thereto, or the orders, rules, and regulations of the commission is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than

twenty-five dollars ($25) nor more than five hundred dollars, ($500), or imprisoned in the county jail for not more than six (6) months, or both fined and imprisoned. In addition, the person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish, or trap within this state for a period of sixteen (16) months from the date of conviction.

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R. C. M. 1921; amd. Sec. 23, Ch. 192, L. 1925; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955; amd. Sec. 29, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "including the provisions of section 26-101 to 26-1306, and all acts amendatory thereof, or supplementary" following "state law pertaining to fish and game" in the first sentence; eliminated repetitious language in the 1955 amendment; and made minor changes in style, phraseology and punctuation.

26-332. (3714) **Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.** Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fishtraps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, spears or gigs may be used for taking walleyed pike, sauger, northern pike and nongame fish, and traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such nongame fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971.

Amendments

The 1969 amendment inserted "spears or gigs * * * nongame fish, and" in the proviso and inserted "nongame" before "fish so taken" near the end of the section.

The 1971 amendment deleted "nongame" after "may be used for the taking of designated species of" in the middle part of the proviso.

26-333. (3715) **Record of seining licenses—refusal of license.** The director shall keep a record of all licenses issued by him for the use of a net

for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game moneys in the earmarked revenue fund. A license may not be issued to a person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R. C. M. 1921; amd. Sec. 30, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "The director shall" for "It shall be the duty of the state game warden to" at the beginning of the first sentence; divided the former first sentence into two sentences; substituted "fish and game moneys in the earmarked revenue fund" at the end of the second sentence for "fish and game fund"; and made minor changes in style, phraseology and punctuation.

26-345. Fire danger—area closed to hunting and fishing. When the fire danger becomes so extreme that the governor upon the advice and recommendation of the department of natural resources and conservation closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed so long as the fire closure remains in effect.

History: En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973.

Title of Act

An act allowing for the closure of the hunting or fishing season during periods of extreme fire danger.

Amendments

The 1973 amendment substituted "department of natural resources and conservation" for "Montana state forester"; and made minor changes in style and phraseology.

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

Section
26-402. Destruction of beaver and beaver dams for protection of public health.

26-401. (3722) **Repealed.**

Repeal

Section 26-401 (Sec. 38, Ch. 173, L. 1917; Sec. 1, Ch. 197, L. 1919; Sec. 17, Ch. 77, L. 1923; Sec. 19, Ch. 59, L. 1927; Sec. 1, Ch. 167, L. 1935; Sec. 15, Ch. 224, L. 1947; Sec. 1, Ch. 153, L. 1953; Sec. 1, Ch. 24, L. 1957; Sec. 1, Ch. 35, L. 1967), relating to protection of beaver, was repealed by Sec. 1, Ch. 56, Laws 1969, effective September 1, 1969.

26-402. (3722A) **Destruction of beaver and beaver dams for protection of public health.** (1) When a complaint is made to the department of health and environmental sciences that beaver are obstructing the free flow of a stream flowing through a settled area and into which sewage of a town or city is dumped, and the obstruction endangers public health the department of health and environmental sciences shall immediately investigate the complaint. If it finds that the work of the beavers endangers public health, it shall report the facts to the department of fish and game.

The commission shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which shall be designated by the warden making the inspection. The landowner shall remove all beaver and beaver

dams as provided by the permit, within ten (10) days after its issuance. If the landowner refuses to remove the beaver or the dams in the ten-day period, or if he does not desire to do so and so advises the commission, then the commission may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(2) The commission shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives shall be furnished by the county in which the beaver dams are located.

History: En. Sec. 1, Ch. 173, L. 1943; amd. Sec. 32, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department of health and environmental sciences" for "state board of health" twice in the first sentence of subsection (1); substituted "department of fish and game" for "fish and game commission" at the end of the first paragraph in subsection (1); deleted "deputy game" before "warden" near the end of the first sentence of the second paragraph in subsection (1); inserted "and beaver dams" in the second sentence of the second paragraph of subsection (1); and made minor changes in style, phraseology and punctuation.

CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

Section
26-501. Protection of wild birds other than game birds.
26-501.1. Protection and conservation of raptors—falconry.
26-506. Sale of confiscated birds and animals.
26-509. Record of confiscated property.

26-501. (3723) **Protection of wild birds other than game birds.** A person who hunts, captures, kills, possesses, purchases, offers or exposes for sale, ships, or transports any wild bird other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license or permit issued by the state fish and game director is guilty of a misdemeanor and shall be punished as provided by section 26-324. This section does not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, and magpies, and other birds the fish and game commission designates, or the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973.

Amendments

The 1971 amendment inserted "falconer's license" in the first sentence; substituted "house sparrows" for "English sparrows" in the second sentence; inserted "starlings, rock doves" in the second sentence; and deleted "eagles, hawks, snow owls, great gray owls, great horned owls, kingfishers, and jays" from the second sentence.

The 1973 amendment substituted "director" for "state fish and game warden" near the end of the first sentence; and made minor changes in style and phraseology.

26-501.1. Protection and conservation of raptors—falconry. (1) "Raptors" when used in this section means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(2) A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this section.

(3) The commission may adopt specific rules for the keeping of records, and for the trapping, taking, possession, or training of raptors used in the practice of falconry, and may authorize the issuance of licenses to persons for the practice of falconry. It is unlawful for a resident of this state to possess a raptor or to train a raptor in the practice of falconry without a license.

(4) The peregrine falcon (Falcon peregrinus), bald eagle (Haliaetus leucocephalus), golden eagle (Aquila chrysaetos), and osprey (Pandion haliaetus) may not be captured in this state for the sport of falconry.

(5) The fee for a falconry license is three dollars ($3) a year or any part of a year. A license expires April 30 each year.

(6) A license may not be issued to a person under the age of twelve (12) years.

(7) Species of raptors which are native to North America may be brought into Montana for the purposes of falconry unless that action is specifically prohibited by this section, the laws of other states, or the regulations of the federal government. Those raptors may be possessed, subject to this section. A person bringing a raptor into this state must be able to show proof of the area of origin.

(8) A licensee may not at any time possess more than three (3) raptors, including those that have been imported.

(9) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by commission rules), or by traps or nets which are humane in their operation and use. Not more than one (1) young may be taken from one (1) nest by a permittee or permittees, and at least one (1) young must be left in the nest. The commission may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors may not be used to intentionally flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other regulations relating to game birds must be obeyed.

(12) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this section without notifying the department of fish and game within ten (10) days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds or unprotected birds or mammals shall have in possession a valid hunting license.

(14) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

(15) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department.

(16) A person who violates this section or section 26-501 is guilty of a misdemeanor and shall be prosecuted under section 26-324.

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "or cause to be shipped or transported" following "or transport" in subsection (2); substituted "this section or section 26-501" for "provisions of this act" in subsection (16); and made minor changes in style and phraseology.

26-506. (3726) **Sale of confiscated birds and animals.** All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer or warden shall be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than five (5) nor more than thirty (30) days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice, and under those terms and conditions which in the discretion of the officers seem conducive to securing full value.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R. C. M. 1947; amd. Sec. 35, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted references to the director for references to the state game warden; substituted references to wardens for references to deputy game wardens; and made minor changes in style, phraseology and punctuation.

26-509. (3729) **Record of confiscated property.** The director and wardens shall keep a complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received for it upon public sale, and the disposition of the money.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R. C. M. 1921; amd. Sec. 36, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted a reference to the director for a reference to the state game warden; substituted a reference to warden for a reference to deputy game warden; deleted the former second sentence which required the director to keep in his office a permanent record showing all property confiscated and its disposition; and made minor changes in style and phraseology.

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

Section
26-812. Forfeiture of license or permit for littering—activity during suspension as misdemeanor.
26-813. Placing of caged fish in public waters prohibited except as provided by regulation.
26-814. Authority of commission over placing of caged fish.

26-812. Forfeiture of license or permit for littering—activity during suspension as misdemeanor. Any holder of a Montana resident or nonresident fishing or hunting license, or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing or camping shall forfeit his license and privilege to hunt, fish, camp or trap within Montana for a period of one (1) year from the date of conviction. Any person who hunts, fishes, camps or traps in Montana while such license and privilege are suspended is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 43, L. 1971; amd. Sec. 2, Ch. 480, L. 1973.

Amendments

The 1973 amendment increased the period for forfeiture of license from ninety days to one year; and added the second sentence.

Title of Act

An act to provide that the hunting or fishing license or camping permit of any person convicted of littering public or private lands while hunting, fishing or camping shall be forfeited for ninety days.

26-813. Placing of caged fish in public waters prohibited except as provided by regulation. It shall be unlawful for any person, firm or corporation to place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by fish and game commission regulation.

History: En. Sec. 1, Ch. 126, L. 1971.

Title of Act

An act to regulate the placing of caged fish in public waters and provide the fish and game commission with authority to regulate.

26-814. Authority of commission over placing of caged fish. The commission shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use and the introduction of disease.

History: En. Sec. 2, Ch. 126, L. 1971.

CHAPTER 9—OUTFITTERS AND GUIDES—TAXIDERMISTS

Section
26-908. Outfitters and guides law—definitions.
26-909. Licensed outfitter or guide required for nonresident hunting—exception for landowner—waiver.
26-911. Powers and duties of department.
26-912. Outfitters' council—powers and duties.
26-913. Rules and regulations for outfitting and guiding.
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26-919. Procedure for revocation or suspension of license.
26-920. Appeal to district court.
26-921. Enforcement.
26-922. Criminal penalty for violations.

26-901, 26-902. (3745, 3746) **Repealed.**

Repeal

Sections 26-901 and 26-902 (Secs. 66, 67, Ch. 173, L. 1917; Sec. 17½, Ch. 77, L. 1923; Sec. 1, Ch. 103, L. 1941; Sec. 25, Ch. 224, L. 1947; Secs. 1, 2, Ch. 173, L. 1949; Secs. 1, 2, Ch. 184, L. 1951; Secs. 1, 5, Ch. 223, L. 1955), relating to outfitters, are repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972.

26-905. (3749) **Repealed.**

Repeal

Section 26-905 (Sec. 70, Ch. 173, L. 1917; Sec. 5, Ch. 173, L. 1949; Sec. 4, Ch. 184, L. 1951; Sec. 4, Ch. 223, L. 1955), relating to the records required of an outfitter, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-908. Outfitters and guides law—definitions. As used in this act, unless the context requires otherwise:

(1) "Outfitter" has the definition given it in section 26-904.

(2) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(3) "Resident guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation.

(4) "Advisory council" means the Montana outfitters' council provided for in section 82A-2005.

(5) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under section 26-202.3.

(6) "Nonresident" means a person other than a resident.

(7) "License year" means that period commencing May 1 and ending April 30 of the next year.

History: En. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973.

Title of Act

An act providing for the licensing and regulation of outfitting and guiding of hunting and fishing parties in the state of Montana; providing for the regulation of nonresident hunters; the protection of private property; the protection of environmental resources; and to repeal section 26-901, 26-902 and 26-303.2, R.C.M., 1947, and providing an effective date.

Amendments

The 1973 amendment substituted "requires" for "indicates" in the preliminary clause; deleted "protected" before "game animals or fish" in subsection (2); inserted "provided for in section 82A-2005" at the end of subsection (4); deleted subsection (8) which defined "Supervisor of outfitting"; and made minor changes in style and phraseology.

26-909. Licensed outfitter or guide required for nonresident hunting—exception for landowner—waiver. (1) It shall be unlawful for any nonresident to hunt game animals on any land within any national forest, wilderness area, national game refuge, or state game range within the state of Montana unless accompanied by a licensed outfitter, professional guide or resident guide and the nonresident hunting license must bear the signature and license number of the outfitter or resident guide who accompanies him except as noted below.

(2) A landowner or agent may guide nonresident or resident hunters on land owned by, or land leased to him without a guide license; or he may authorize nonresident or resident hunters to hunt without a guide on land owned by, or land leased to, such landowner, lessee or agent. The nonresident hunter's hunting license must bear the signature of the resident landowner, lessee or agent on whose fenced property he is hunting as evidence that permission has been obtained.

(3) The Montana fish and game commission shall have authority to waive guide requirements for holders of B-2, B-5 and B-6 licenses in special deer and antelope areas during the period B-5 and B-6 license holders may hunt.

Guide requirements may not be waived in areas open to a general hunting season on any game animal other than deer and antelope.

History: En. Sec. 2, Ch. 221, L. 1971.

26-910. Repealed.

Repeal

Section 26-910 (Sec. 3, Ch. 221, L. 1971), relating to the appointment of a supervisor of outfitting, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 26-911 (5).

26-911. Powers and duties of department. The department shall:

(1) Prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year, but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account;

(2) Co-operate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) Establish a minimum of two (2) meetings annually with the advisory council;

(4) Consult with the advisory council to develop policy concerning the administration of outfitting and to transmit the council recommendations to the commission;

(5) Designate a warden or ex officio warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the supervisor of outfitting; deleted former subsection (1), which imposed the duty of carrying out and causing enforcement of all provisions of the act; renumbered subsections (2), (3), (4) and (5) as (1), (2), (3) and (4); substituted "earmarked revenue fund, fish and game account" for "state fish and game fund" at the end of subsection (1); added a new subsection (5); and made minor changes in phraseology.

26-912. Outfitters' council—powers and duties. The council shall have the authority and duty to make recommendations to the commission and the director as to:

(1) Outfitter standards;

(2) Rules of procedures and regulations to effectuate this act, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include training, experience, knowledge of rules and regulations of governmental bodies pertaining to outfitting, and condition and type of gear and equipment;

(3) Hearings and proceedings to suspend or revoke licenses of outfitters and guides and to recommend suspension or revocation of licenses for due cause;

(4) Any reasonable rules, and regulations not in conflict with this act, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public.

History: En. Sec. 5, Ch. 221, L. 1971; amd. Sec. 39, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted subsection (1), which established the advisory council; made the preliminary clause of subsection (2) the preliminary clause to the entire section; designated former subdivisions (2) (a), (2) (b), (2) (c) and (2) (d) as subdivisions (1), (2), (3) and (4); and made minor changes in style, phraseology and punctuation.

Cross-References

Outfitters' council, see sec. 82A-2005.

26-913. Rules and regulations for outfitting and guiding. (1) The fish and game commission shall have the authority to adopt, promulgate and enforce rules and regulations recommended by the advisory council as provided in section 5 [26-912] and all other rules and regulations it may deem proper for the proper administration and enforcement of the provisions of this act and the regulation of outfitting and guiding to provide for the services to the public.

History: En. Sec. 6, Ch. 221, L. 1971.

26-914. Requirement of license as outfitter or guide—services performed—standards. (1) No person shall act as an outfitter, professional guide or resident guide, or advertise as an outfitter, without first securing a license in accordance with the provisions of this act.

(2) Whenever an outfitter is engaged by any person, or a resident guide takes out nonresident friends, said outfitter or resident guide shall keep and submit records as required by the fish and game commission.

(3) Outfitters and their employees shall not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters and resident guides utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter or resident guide intends to operate, and shall comply to environmental protection standards established for these lands.

(5) An outfitter shall not willfully and substantially misrepresent his facilities, prices, equipment, services or hunting.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

History: En. Sec. 7, Ch. 221, L. 1971.

26-915. Application for license—contents—requirements and qualifications—fees. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

(d) The experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or used by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act.

(2) Each applicant for an outfitter's license shall meet the following requirements:

(a) Be a competent person of good moral character.

(b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.

(c) Be at least eighteen (18) years of age.

(d) Be in such physical condition as to be able to perform his assigned or obligated duties.

(e) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All equipment and facilities shall be subject to inspection at all reasonable times and places by the fish and game commission or its designated agent.

(f) Pass a standard examination administered by the fish and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(i) Fish and game laws and regulations.
(ii) Practical woodsmanship.
(iii) General knowledge of big game.
(iv) Field preparation of trophies.
(v) Care of game meat.
(vi) Use of outfitter's gear as shown on the application.
(vii) Knowledge of area and terrain.
(viii) Knowledge of firearms.
(ix) Federal and state regulations as applicable to outfitting.
(x) Practical first aid.

(3) Each applicant for a professional guide's license shall meet the following requirements:

(a) Be a competent person of good moral character.

(b) Be a citizen of the United States and a resident of Montana as defined in this act.

(c) Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties.

(d) Be endorsed and recommended by an outfitter with a valid license.

(4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee ..... $ 50.00
Resident professional guide's fee ..... $ 15.00
Resident guide's license is a valid Montana wildlife conservation license.
Nonresident outfitter's license fee $150.00
Nonresident professional guide's fee $100.00

Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said amounts for

similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such nonresident resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the age specified in subdivision (2) (c) from twenty-one to eighteen years; and made a minor change in style.

26-916. Kinds of license issued. (1) After receipt of the application and when all the conditions and requirements of this act have been satisfied, the fish and game director shall issue either of the following licenses depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application.

(a) A general license authorizing him to perform all the functions of an outfitter as that term is defined in section 26-904, R.C.M., 1947.

(b) A special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed, and shall be valid for the licensing year in which issued. If the application is denied, the fish and game director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purpose of this act, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee until license is issued or for ten (10) days after notification of rejection of license.

(3) To be valid, a professional guide license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971.

26-917. Deposit of fees. All fees collected under the provisions of this act shall be deposited as provided in section 26-121, R.C.M., 1947.

History: En. Sec. 10, Ch. 221, L. 1971.

26-918. Grounds for suspension or revocation of license. Every license may be suspended or revoked by the fish and game commission upon any of the following grounds:

(1) Fraud or deception in procuring a license.

(2) Fraudulent, untruthful or misleading advertising.

(3) Conviction of a felony, until civil rights are restored.

(4) Repeated convictions of violations of the fish and game laws of the state of Montana.

(5) A substantial breach of any written contract with any person utilizing his services as pertains to this act.

(6) The willful and repeated employment of an unlicensed guide by an outfitter.

(7) For failure to comply with the provisions of this act.

(8) Gross negligence or misconduct while acting as an outfitter or guide.

History: En. Sec. 11, Ch. 221, L. 1971.

26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council shall within sixty (60) days recommend the action to be taken. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and report his action to the fish and game commission and will advise the accused and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than twenty (20) days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license for a period not to exceed (3) years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission.

History: En. Sec. 12, Ch. 221, L. 1971.

26-920. Appeal to district court. Any person who feels aggrieved by any action of the fish and game commission in denying the issuance of a license, or the suspension or revocation of his license as an outfitter or

guide, may appeal to the district court of the county of his residence, within sixty (60) days after the entry of the order by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper.

History: En. Sec. 13, Ch. 221, L. 1971.

26-921. Enforcement. The warden or ex officio warden, designated by the department to primarily administer outfitting and guiding laws and regulations, and other wardens and all peace officers shall enforce this act.

History: En. Sec. 14, Ch. 221, L. 1971; amd. Sec. 40, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "The warden or ex officio warden, designated by the department to primarily administer outfitting and guiding laws and regulations" for "The supervisor of outfitting"; substituted "other wardens" for "state fish and game wardens"; and made minor changes in phraseology.

26-922. Criminal penalty for violations. In addition to penalties herein provided, any person violating provisions of this act shall be punished as provided in section 26-324, R.C.M., 1947.

History: En. Sec. 15, Ch. 221, L. 1971.

Repealing Clause

Section 16 of Ch. 221, Laws 1971 read "Sections 26-901, 26-902 and 26-303.2, R. C.M., 1947, are repealed."

Separability Clause

Section 17 of Ch. 221, Laws 1971 read "The provisions of this act shall be severable, and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Effective Date

Section 18 of Ch. 221, Laws 1971 read "This act shall be effective May 1, 1972."

CHAPTER 10—DISPOSAL OF FINES—DUTIES OF COURTS—EXCEPTIONS FROM ACT

Section
26-1001. Disposition of fines, bond and penalties.
26-1002. Payment of cost bill to county wherein costs were incurred.
26-1008. Permit for taking fish or game for scientific purposes.

26-1001. (3753) **Disposition of fines, bond and penalties.** All fines, bonds, and penalties mentioned in this title may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R. C. M. 1921; amd. Sec. 25, Ch. 77, L. 1923; amd. Sec. 41, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this act shall be

paid to the state game warden and by him paid to the state treasurer and by him placed to the credit of the fund to be known as the fish and game fund" from the end of the first sentence; deleted "and the defendant or defendants may by order of the court be confined in the county jail of the county until such fine and costs are served out at the rate of $2.00 per day" at the end of the section; and made minor changes in phraseology.

26-1002. (3754) **Payment of cost bill to county wherein costs were incurred.** In a prosecution for the violation of fish and game laws where costs are incurred, a cost bill shall be prepared. The cost bill shall include the cost of board of prisoners and shall be presented to the department of administration. If the costs are allowed, the state treasurer shall pay them, out of the fish and game moneys in the earmarked revenue fund, to the treasurer of the county where the costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R. C. M. 1921; amd. Sec. 42, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "department of administration" for "state board of examiners" at the end of the first sentence; substituted "fish and game moneys in the earmarked revenue fund" for "state game and fish fund" in the second sentence; and made minor changes in style and phraseology.

26-1008. (3760) **Permit for taking fish or game for scientific purposes.** It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning, or of any governmental agency, who may be investigating a scientific subject making it necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game regulation. He may take, kill, and capture protected or unprotected birds, fish or animals in any way, except by the explosion of dynamite. No more of the birds, fish, or animals may be taken than are necessary for the investigation. A person who desires to engage in the scientific investigation shall apply to the director for a permit. The director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the director is satisfied of the good faith and qualifications of the applicant, he shall issue a permit, which shall place a time limit on the collections and may place a restriction on the number of birds, fish or animals to be taken, and shall require a report of the numbers and species of animals taken by collection areas. The permittee shall pay five dollars ($5) for the permit. The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are mentioned in the permit. Any representative of an accredited school, college, university, or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and his associates. The associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit and of the times for which each associate is issued a copy. The original applicant is responsible for his associates' use of the permit or copies of the permit, including their reports of species and numbers of animals collected. A person violating this section is guilty of a misdemeanor, punishable as provided by section 26-324.

History: En. Sec. 81, Ch. 173, L. 1917; re-en Sec 3760, R. C. M. 1921; amd. Sec. 27, Ch. 224, L. 1947; amd. Sec. 1, Ch. 116, L. 1973; amd. Sec. 43, Ch. 511, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 116, and once by Ch. 511. Chapter 511 incorporated most of the changes made by the earlier amendment. To the extent they conflict, the compiler has used the language of Chapter 511, the later in date of approval.

Amendments

Chapter 116, Laws of 1973, inserted "accredited" before "school" near the beginning of the section; inserted "or of any governmental agency" in the first sentence; substituted "protected by Montana law or state fish and game commission regulation" for "found in this state" in the first sentence; substituted "protected or unprotected birds, fish or animals" for "the same" after "take, kill and capture" in the first sentence; substituted references to the state director of fish and game for references to the state game warden throughout the section; substituted "permit" for "license" throughout the section; inserted a new second sentence similar to the present fifth sentence; inserted "and qualifications" after "good faith" in the third sentence, now the sixth sentence; substituted "collections" for "investigations" in the third sentence, now the sixth sentence; substituted "may" for "shall" before "place a restriction" in the third sentence, now the sixth sentence; inserted "and shall require a report of the numbers and species of animals taken by collection area" in the third sentence, now the sixth sentence; inserted four new sentences similar to the present ninth to twelfth sentences; and made minor changes in phraseology.

Chapter 511, Laws of 1973, substituted "representative of an accredited school" for "accredited representative of any school" in the first sentence; inserted "or of any governmental agency" in the first sentence; substituted "protected by Montana law or state fish and game regulation" for "found in this state" at the end of the first sentence; substituted "protected or unprotected birds, fish or animals" for "the same" in the second sentence; substituted "director" for "state game warden" in the fourth and sixth sentences; substituted "permit" for "license" at the end of the fourth sentence; inserted the fifth sentence; substituted "on the collections and may" for "upon such investigation, and shall" in the sixth sentence; added "and shall require a report of the numbers and species of animals taken by collection areas" to the end of the sixth sentence; inserted the ninth, tenth, eleventh and twelfth sentences; and made minor changes in style, phraseology and punctuation.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

Section
26-1101. Creation of game preserves—provisions thereof—penalties for violation of provisions.
26-1128. Gates of the Mountain Game Preserve.

26-1101. (3761) **Creation of game preserves—provisions thereof—penalties for violation of provisions.** (1) There are, for the better protection of all the game animals and birds within their limits, game preserves within the state. Except as provided in this section, no person may, within the limits of a game preserve created by the legislature or by the fish and game commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory

animals or birds, or for carrying firearms may be issued by the director, upon the payment of the fee and in accordance with rules established for the preserve by the commission. A person violating this section or any other law relating to game preserves, is guilty of a misdemeanor and shall be punished as provided by section 26-324.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R. C. M. 1921; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949; amd. Sec. 44, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; deleted "of Montana, and more particularly hereinafter described as to their exterior limits by sections 26-1102 to 26-1104, 26-1106, 26-1107, 26-1110, 26-1112, 26-1114, 26-1116, 26-1118" from the end of the first sentence; deleted "or cause to be hunted for, trapped or killed, any" following "hunt for, trap, capture, kill, or take" in the second sentence of subsection (1); substituted "director" for "state game warden" in the first sentence of subsection (2); and made minor changes in style, phraseology and punctuation.

26-1128. Gates of the Mountain Game Preserve. Beginning in Section 2, Township 12 North, Range 3 West, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of said upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon Road, then northerly along the power line to said beacon, then along the bulldozer road to the point of the ridge in Section 23, Township 13 North, Range 3 West, then northerly to the Missouri River, then easterly across said river and lake to the Forest Service Boundary to the Wilderness Boundary, then south following the Wilderness Boundary to the southeast corner of Section 1, Township 12 North, Range 3 West, then west back to the upper Holter Lake to the point of beginning, intending hereby to include in said game preserve all that territory adjacent to the Gates of the Mountains area, shall be called and known as the Gates of the Mountains Game Preserve.

It shall be unlawful for any person to shoot, kill, capture or destroy or in any way injure any bird or fur-bearing animal in said area or to interfere with their eggs or nests or to shoot at, wound or kill any bird or fur-bearing animal within said preserve. Said area shall be closed to all hunting at all times.

History: En. Sec. 1, Ch. 115, L. 1971.

Title of Act

An act to provide for the creation of a game preserve in the area of the Gates of the Mountains, Lewis and Clark County, Montana.

CHAPTER 12—PERMITS FOR BREEDING GAME BIRDS AND ANIMALS —OTHER REGULATIONS

Section

26-1201. Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded.
26-1205. Regulation of roadside menageries or zoos—definitions.
26-1206. Permits—adoption and enforcement of regulations.
26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit.
26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers.
26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.

26-1210. Inspection—permit revocation—redemption of wildlife.
26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal.
26-1212. Disposal of fines, bonds or penalties—fees.

26-1201. (3777) **Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded.** Any person, or persons, firm, company or corporation before engaging in the business or occupation of propagating, owning and controlling game animals except buffalo, game birds (except migratory game birds), or fur-bearing animals of the state of Montana, shall first procure a game or fur farm permit from the state fish and game director. The owning, controlling, propagating, salvage, banding, transportation, shipping, import, export, acquisition and scientific collecting of migratory game birds shall be in compliance with regulations of the commission adopted pursuant to section 26-320.

Such game or fur farm permit shall be issued to responsible applicants who own or lease the premises on which their operations are to be conducted, when such applicant has so fenced the place where such game or fur farm is located, with fencing material, approved by the state fish and game director, so that no wild or public animals of like species can mix with those confined.

Foundation stock for a fur farm may be obtained from the state fish and game commission by a free permit authorizing game farm permit holders to capture a designated number of fur-bearing animals, with the exception of beaver or marten, for breeding stock, under such rules and regulations as the commission shall prescribe. Such fur-bearing animals captured under permit shall not be sold or pelted for the period of one (1) year after their capture and the skins or pelts of any fur-bearing animals accidentally killed during their capture or for the period of one (1) year thereafter shall be turned over to the state fish and game director.

A charge shall be made for the capture of each beaver or marten by fur farm permit holders for foundation stock, under authorization of the state fish and game director as follows:

Beaver—fifteen dollars ($15) each.

Marten—twenty-five dollars ($25) each.

The skins, pelts or products of such beaver and marten on game or fur farms shall be tagged individually with tags purchased from the commission for a fee of five cents (5¢) each. Each game farm or fur farm shall be open to complete inspection by the state fish and game director or his wardens at any reasonable time, inclusive of the whole area thereof, all stock thereon, and all structures, pens, and other devices thereon. Game farm or fur farm permits issued under the provisions of this act shall be valid during the time such game or fur farm is operated and conducted according to law, provided that on or before January 31 of each year a report shall be submitted by the licensee to the state fish and game director, showing the numbers and species of game or fur-bearing animals on hand on January 1, preceding, and the number and kinds of animals pelted, bought or sold during the year.

Any person or persons, except as herein provided, who, at any time, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which fur-bearing animals are kept for breeding purposes, and on the fence of which enclosure are kept posted notices forbidding trespassing on the premises where the said animals are kept, which notices must be plainly discernible at a distance of not less than twenty-five (25) yards therefrom, shall pass within the said fence or such enclosure or climb over, break or cut through the same for the purpose of entering the said enclosure, etc., or for any other purpose whatsoever, shall be guilty of a misdemeanor, and liable to the penalty hereinafter provided.

Any person or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana shall apply for and be issued free of charge a numbered certificate of identification for such fur farm, which certificate shall be nontransferable and valid for the life of the business; provided, no other provisions of this section shall be construed to or shall in any manner affect such person, or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R. C. M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971.

Amendments

The 1971 amendment inserted "except buffalo" in the first sentence of the first paragraph; and made minor changes in phraseology.

26-1205. Regulation of roadside menageries or zoos—definitions. As used in sections 26-1205 through 26-1212, unless the context requires otherwise:

(1) "Roadside menagerie or zoo" means any place where one (1) or more wild animals, including birds, reptiles, and the like are kept in captivity, for the evident purpose of exhibition or attracting trade. It does not include the exhibition of any animal by an educational institution or in a zoological garden chartered as a nonprofit corporation by the state and does not include animals exhibited by any traveling theatrical exhibition or circus.

(2) "Wild animal" means an animal wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

History: En. Sec. 1, Ch. 130, L. 1969; amd. Sec. 45, Ch. 511, L. 1973.

Title of Act

An act to require the fish and game commission to control and regulate roadside menageries or zoos.

Amendments

The 1973 amendment substituted "sections 26-1205 through 26-1212, unless the context requires otherwise" for "this act, unless the context clearly indicates otherwise" in the preliminary clause; deleted former subdivision (1) which defined "Commission"; redesignated former subdivisions (2) and (3) as (1) and (2); deleted former subdivision (4), defining "Director"; and made minor changes in style, phraseology and punctuation.

26-1206. Permits—adoption and enforcement of regulations. (1) The commission shall grant permits for roadside menageries or zoos.

(2) The commission shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding and sanitation of animals kept in roadside menageries, and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969.

26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit. (1) It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five (5) or less animals shall be ten dollars ($10.00). The annual permit fee for more than five (5) animals shall be twenty-five dollars ($25.00). Permits shall expire on December 31, but may be renewed upon payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the commission until it has satisfactorily verified that the provisions for housing and caring for such animals and for protecting the public are proper and adequate and in accordance with the standards established by the commission.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Sec. 3, Ch. 130, L. 1969.

26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers. It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds (a) that all provisions of this act and of the commission regulations are complied with by the applicant; and (b) that the number and species of wildlife desired is not excessive under the circumstances. If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold or transferred under such regulations as the fish and game commission may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969.

26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.—A menagerie

permit cannot be construed as a commercial game propagating permit and the holder of such permit must not, under any circumstances, sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds or fur-bearing animals are the property of the state wherein the menagerie is located, and must be disposed of by the state.

History: En. Sec. 5, Ch. 130, L. 1969.

26-1210. Inspection — permit revocation — redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this act or with the commission regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969.

26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal. The provisions of this act shall be enforced by any state fish and game warden or any other legally authorized officer. Any person violating the provisions of this act shall, upon conviction, be punished by a fine of not more than two hundred fifty dollars ($250.00), imprisonment for a period of not more than ten (10) days, or both, and at the discretion of the court the permit and all rights and privileges inherent therein may be forfeited. Any animals being kept in violation of any section of this act may be confiscated or ordered disposed of at the discretion of the state fish and game director. The permittee may appeal to the commission within twenty (20) days of the date of the order to confiscate and the commission shall hold a hearing on such an appeal and the decision of the commission shall be final.

History: En. Sec. 7, Ch. 130, L. 1969.

26-1212. Disposal of fines, bonds or penalties—fees. Fines, bonds, or penalties shall be administered and disposed of in accordance with the provisions of section 26-121. Fees obtained under sections 26-1205 through 26-1212 shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969; amd. Sec. 46, Ch. 511, L. 1973.

Amendments

The 1973 amendment changed the statutory reference at the end of the first sentence from section 26-1001 to 26-121; and substituted "sections 26-1205 through 26-1212" for "this act" in the second sentence.

CHAPTER 13—FUR DEALER'S LICENSE AND REGULATION

Section
26-1302. Records to be kept by fur dealers—inspection.
26-1303. Persons required to procure a fur dealer's license.

26-1302. (3778.4) **Records to be kept by fur dealers—inspection.** (1) A fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) The number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) The place where the skins or furs were killed or trapped and a separate record of all the skins or pelts as were killed or trapped outside this state;

(c) The trapping license number under which the furs or pelts were taken in cases where a trapper's license is required;

(d) The names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the state fish and game director or any warden, or any United States game warden, and shall be preserved and accessible for one year after the expiration of any license granted to the fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929; amd. Sec. 47, Ch. 511, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state fish and game warden" in subsection (2); substituted "warden" for "his deputies" in subsection (2); and made minor changes in style, phraseology and punctuation.

26-1303. (3778.5) **Persons required to procure fur dealer's license.** A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state secure a fur dealer's license from the director. No license is required for a hunter or trapper selling skins or pelts which he has lawfully taken, nor for a person not a fur dealer who purchases skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929; amd. Sec. 48, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" at the end of the first sentence; and made minor changes in style, punctuation and phraseology.

CHAPTER 15—CONSTRUCTION AND HYDRAULIC PROJECTS AFFECTING FISH AND GAME

Section

26-1502. Notice of projects to be given fish and game commission—contents of notice.
26-1505. Refusal by applicant to modify plans—arbitration of disputes.
26-1507. Irrigation projects exempt.
26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records.

26-1502. Notice of projects to be given fish and game commission—contents of notice.

History: En. Sec. 2, Ch. 10, L. 1965; amd. Sec. 1, Ch. 133, L. 1971.

Compiler's Notes

Laws 1971, Ch. 133 purported to amend this section but made no change. For section, see parent volume.

26-1505. Refusal by applicant to modify plans—arbitration of disputes. (1) * * * [Same as parent volume.]

(2) Upon receipt of such notice of refusal, the fish and game commission shall determine if it wants the disagreement arbitrated. Within ten (10) days after an affirmative determination, and after notice to the applicant, the fish and game commission shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within five (5) days of receipt of notification, such judges shall appoint three (3) people from the county or counties in which the project is located to an arbitration committee. Within ten (10) days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two (2) members of the committee. The decision shall be binding on all parties concerned. The actual and necessary expenses of the arbitrators shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965; amd. Sec. 2, Ch. 133, L. 1971.

Amendments

The 1971 amendment substituted "applicant" for "for other agency or agencies involved" in the second sentence of subsection (2); and substituted "parties concerned" for "agencies concerned" in the fourth sentence of subsection (2).

26-1507. Irrigation projects exempt. This act shall not apply to any irrigation district project or any other irrigation system.

History: En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971.

Amendments

The 1971 amendment deleted "to any state water conservation board irrigation project presently operating, or that may be constructed in the future or" after "shall not apply"; and substituted "system" for "project" at the end of the section.

26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records. The Montana state fish and game department shall observe and report to the Montana state fish and game commission concerning acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such reports, the said commission shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. Said commission shall keep complete files and records, available for public inspection, of all matters and things done, and all communications and correspondence sent and received, pursuant to this section.

History: En. Sec. 4, Ch. 133, L. 1971.

Title of Act

An act amending sections 26-1502, 26-1505, and 26-1507, R. C. M., 1947, and adding new sections establishing the policy of the state of Montana on protection of fishing streams, providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission, for review of such plans and exempting certain projects and parties.

CHAPTER 17—IMPORTATION OF SALMONID FISH OR EGGS

Section
26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms.
26-1702. Infectious organisms dead—certification unnecessary.
26-1703. Information required in certificate.
26-1704. Rules and regulations—personnel.
26-1705. Penalty—misdemeanor.

26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms. It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination, and are accompanied by a written certification that the importation or source is free of protozoan myxosoma cerebralis, the causative agent of so-called "whirling disease," and such other infectious organisms as the state fish and game commission may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish and game director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish and game director may order. If a copy of a current inspection report, certifying that the hatchery of origin is free of protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may direct, is not attached to each shipment from such hatchery, then each shipment must be inspected and certified.

History: En. Sec. 1, Ch. 10, L. 1969.

Title of Act

An act to provide that salmonid fish and eggs imported into Montana be certified free of certain diseases, and providing an effective date.

26-1702. Infectious organisms dead — certification unnecessary. Nothing in this act shall restrict the importation and transportation of dead salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby all spores of the protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may specify, have been killed. Salmon caught and brought directly into North America and transported into Montana for processing or sale, or any salmonid caught wild in North America shall be exempt from the requirement for certification.

History: En. Sec. 2, Ch. 10, L. 1969.

26-1703. Information required in certificate. The certificate required by this section shall consist of a statement in the English language, printed or typewritten, stating that the shipment of fish or eggs is free from protozoan myxosoma cerebralis as determined by the methods outlined in Fish Disease Leaflet 9 printed July, 1968 by the bureau of sport fisheries and wildlife, United States department of the interior, and free of such other organisms as determined by such other methods as the state fish and game commission shall direct. Certificates of individual shipments will contain (1) the date and city of shipment in the state of origin and the anticipated date of arrival and city of destination in Montana, (2)

carrier and carrier identification number, or truck license number if shipped by hatchery truck, (3) bill of lading number or airway bill number, if applicable, and (4) the handwritten signature, in ink, of the authorized certifying officer, and such other information as the state fish and game commission may specify.

History: En. Sec. 3, Ch. 10, L. 1969.

26-1704. Rules and regulations—personnel. The state fish and game commission may promulgate such rules and regulations and may employ such personnel for testing and inspection as are necessary to carry out the provisions of this act.

History: En. Sec. 4, Ch. 10, L. 1969.

26-1705. Penalty—misdemeanor. Any person violating any provision of this act shall be deemed guilty of a misdemeanor and shall be punished as prescribed in section 26-324.

History: En. Sec. 5, Ch. 10, L. 1969.

Effective Date

Section 6 of Ch. 10, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

CHAPTER 18—ENDANGERED SPECIES

Section
26-1801. Citation of act.
26-1802. Definitions.
26-1803. Legislative policy.
26-1804. Investigations by department—regulations—unlawful acts.
26-1805. List of endangered species—issuance—review—unlawful to take species on state or federal list.
26-1806. Establishment of programs by director—review by governor—taking of species for educational and scientific purpose—other provisions for removal.
26-1807. Issuance of regulations.
26-1808. Violation of act—misdemeanor—enforcement—disposition of unlawfully captured wildlife.
26-1809. Construction of act—severability.

26-1801. Citation of act. This act shall be known and may be cited as "The Nongame and Endangered Species Conservation Act."

History: En. Sec. 1, Ch. 461, L. 1973.

Title of Act

An act to provide for the conservation, management, enhancement and protection of nongame fish and wildlife and species threatened with extinction; and to provide enforcement authority and penalties for violations.

26-1802. Definitions. As used in this act:

(1) "department" means the department of fish and game;

(2) "director" means the director of the state department of fish and game;

(3) "commission" means the fish and game commission;

(4) "ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life;

(5) "endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat, or

(b) its overutilization for scientific, commercial or sporting purposes, or

(c) the effect on it of disease, pollution, or predation, or

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or

(e) any combination of the foregoing factors. The commission shall have authority to recommend that the legislature include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50 of the Code of Federal Regulations, appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter;

(6) "management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking;

(7) "nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as "nongame wildlife" for purposes of this act;

(8) "optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function;

(9) "person" means any individual, firm, corporation, association or partnership;

(10) "take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife;

(11) "wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

History: En. Sec. 2, Ch. 461, L. 1973.

26-1803. Legislative policy. The legislature finds and declares all of the following:

(1) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(2) that species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers;

(3) that the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species or subspecies of wildlife unless such actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973.

26-1804. Investigations by department—regulations—unlawful acts. (1) The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations the department shall issue management regulations. Such regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame wildlife. The commission may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The commission shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. The commission may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.

(3) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale nongame wildlife deemed by the commission to be in need of management pursuant to this section. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the commission to be in need of management pursuant to this section.

History: En. Sec. 4, Ch. 461, L. 1973.

26-1805. List of endangered species—issuance—review—unlawful to take species on state or federal list. (1) On the basis of investigations on nongame wildlife provided for in section 4 [26-1804] and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than one (1) year after the effective date of this act, the commission shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are

determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(2) The department shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and the commission shall request the legislature to amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this chapter, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the commission and appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50, Code of Federal Regulations, appendix D); and the United States' list of endangered foreign fish and wildlife (part 17 of title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter; provided, that any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(4) In the event the United States' list of endangered native fish and wildlife is modified subsequent to the effective date of this chapter by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding under subsection (3) if, after the type of scientific determination described in subsection (1), the commission recommends and the legislature accepts such modification for the state.

History: En. Sec. 5, Ch. 461, L. 1973.

26-1806. Establishment of programs by director—review by governor—taking of species for educational and scientific purpose—other provisions for removal. (1) The director shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The commission shall establish such policies as are necessary to carry out the purpose of this section.

(2) In carrying out programs authorized by this section, the commission may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of

the purposes of this section. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section.

(4) The director may permit the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5 [26-1805 (4)], or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(5) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the commission pursuant to subsection (1) of section 4 [26-1804 (1)].

History: En. Sec. 6, Ch. 461, L. 1973.

26-1807. Issuance of regulations. The commission shall issue such regulations as are necessary to carry out the purposes of this act.

History: En. Sec. 7, Ch. 461, L. 1973.

26-1808. Violation of act—misdemeanor—enforcement—disposition of unlawfully captured wildlife. (1) Any person who violates the provisions of this act or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this act.

(3) Wildlife seized under the provisions of this act shall be held by an officer or agent of the department pending disposition of court proceedings, and thereafter be forfeited to the state for disposition as the director may deem appropriate; provided, that, prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The commission is authorized to issue regulations to implement this subsection.

History: En. Sec. 8, Ch. 461, L. 1973.

26-1809. Construction of act—severability. (1) None of the provisions of this act shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation,

processing, sale or offer for sale or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided, that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5 [26-1805 (4)], except as permitted in the provision by subsection (3) of section 5 [26-1805 (3)] and subsection (4) of section 6 [26-1806 (4)].

(2) If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

History: En. Sec. 9, Ch. 461, L. 1973.

TITLE 27—FOOD AND DRUGS

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3. State board of food distributors—regulation of food stores and foodstuffs, Repealed—Section 2, Chapter 256, Laws of 1973.
4. Supervision of milk industry—state milk control board, 27-403, 27-406 to 27-411, 27-414.1, 27-414.2.
5. Oleomargarine, Repealed—Section 9, Chapter 99, Laws of 1953; Section 1, Chapter 286, Laws of 1973.
6. Food service establishments, markets and manufacturers, 27-612, 27-614.
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CHAPTER 2—PESTICIDES

Section
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27-201 to 27-212. Repealed.

Repeal

Sections 27-201 to 27-212 (Secs. 1 to 12, Ch. 263, L. 1947; Secs. 1 to 8, Ch. 239, L. 1953; Sec. 1, Ch. 218, L. 1965; Sec. 220, Ch. 197, L. 1967), relating to insecticides, fungicides, rodenticides, herbicides and other economic poisons, were repealed by Sec. 35, Ch. 403, Laws 1971.

27-213. Short title. This act may be cited as the Montana Pesticides Act.

History: En. Sec. 1, Ch. 403, L. 1971.

Title of Act

An act controlling the distribution, sale, application, disposal and transportation of pesticides and devices; creating a temporary advisory committee; providing registration of pesticides and licensing of applicators; providing procedure for appeals; providing penalties and an effective date.

27-214. Declaration of purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of man and his essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous—is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971.

27-215. Administration. This act shall be administered by the Montana state department of agriculture.

History: En. Sec. 3, Ch. 403, L. 1971.

27-216. Definitions. For the purpose of this act unless the context clearly indicates otherwise:

(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

(b) In the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or the produce thereof.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Applicator" means any person who applies pesticides by any method.

(a) "Commercial applicator" means any person who, in this state, by contract or for hire applies by aerial, ground, or hand equipment pesticides to any land, plants, seed, animals, waters, structures, or vehicles.

(b) "Commercial operator" means any person who applies pesticides under the supervision of a commercial applicator.

(c) "Farm applicator" means a person applying pesticides to his own crops or land.

(d) "Home, yard, garden, home orchard, trees or lawn applicator" means a person applying pesticides to his own home, yard, garden, home orchard, trees or lawn.

(e) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(5) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation or which act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commissioner" means the commissioner of agriculture.

(7) "Crop" means a food intended for human or animal consumption or any fiber product.

(8) "Dealer" means any person who sells, wholesales, offers, or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes and lawn.

(9) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Department of agriculture" means the Montana state department of agriculture.

(11) "Department of health" means the Montana state department of health.

(12) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(13) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(14) "Environment" means the soil, air, water, plants, and animals.

(15) "Equipment" means any equipment or combination of equipment used in the actual application of pesticides, including such types of equipment as aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(17) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient which is not an active ingredient.

(20) "Ingredient statement" means either:

(a) A statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) A statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the pesticide, (except section 4 (20) (a) [subdivision (20) (a) of this section] shall apply if the preparation is highly toxic to man, determined as provided in section 22 [27-234] of this act); and, in addition to section 4 (20) (a) or (b) [subdivision (20) (a) or (b) of this section] in case the pesticide contains arsenic in any form, a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, as, for example beetles, bugs, wasps, flies, and keds, and to other classes of anthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(23) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers.

(b) Accompanying the pesticide or device at any time.

(c) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate nonmisleading reference is made to current official publications of the United States environmental protection agency, departments of agriculture, interior, or health, education and welfare, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" shall apply:

(a) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

(b) To any pesticide:

(i) If it is an imitation of or is offered for sale under the name of another pesticide.

(ii) If its labeling bears any reference to registration under this act.

(iii) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public.

(iv) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man or undue hazard to the environment.

(v) If the label does not bear an ingredient statement on that part of the immediate container and on the outside or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(vi) If any word, statement, or other information required by or under the authority of this act to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) If, in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(viii) In the case of a plant regulator, defoliant, or desiccant which, when used as directed, is injurious to living man or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide. Physical or physiological effects on plants or parts thereof are not deemed to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts; may also be called nemas or eelworms.

(28) "Official sample" means any sample of pesticide or device taken by the department of agriculture or its authorized representative.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, or body politic, or any organized group of persons whether incorporated or not; and includes any trustee, receiver, assignee, or similar representative thereof.

(30) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest of which the commissioner may declare to be a pest.

(31) "Pesticide" means:

(a) Any substance or mixture of substances, including any living organism or any product derived therefrom, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department of agriculture may declare to be a pest;

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and,

(c) Any other substances intended for such use as may be named by the department of agriculture by regulation after calling a public hearing for such purpose.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Registrant" means the person registering any pesticide or device pursuant to the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions and cautions to persons, beneficial insects, animals, crops or the environment other than the pests it is intended to prevent, destroy, control or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals.

(37) "Weed" means any plant or part thereof which grows where not wanted.

History: En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973.

Amendments

The 1973 amendment inserted "seed" in subdivision (4) (a); and inserted subdivision (4) (e).

27-217. Registration. Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state, shall be registered

with the department of agriculture, and such registration shall be renewed annually by the manufacturer or formulator of the pesticide. (1) The department of agriculture shall register all approved pesticides and those so registered shall be subject to registration fees and all other provisions of this act. All registrations of pesticides shall expire on December 31, following date of issuance, unless otherwise terminated.

(a) The applicant for registration shall file with the department of agriculture a statement including:

(i) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant.

(ii) A complete copy of the label of the pesticide, the United States environmental protection agency registration number, if the pesticide is so registered, and a statement of all claims to be made for it including directions for use.

(iii) The trade and chemical name of the pesticide.

(iv) If requested by the department of agriculture, a full description of tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(b) Any pesticide imported into this state, which is subject to the provisions of any federal act providing for the registration of pesticides and which has been duly registered under the provisions of said act, shall be registered in the state, provided that the state may restrict the use and application of the pesticide by type of applicator, time and place and may establish special registrations of pesticides as outlined in sections 5 (6) [subdivision (6) of this section] and 22 (3) [27-234 (3)]. Provided that the annual registration fee is paid and registration information required by the department of agriculture is provided.

(c) The applicant shall pay an annual fee of ten dollars ($10) for each pesticide registered, such fees to be deposited in the treasury of the state to the credit of the general fund.

(2) The department of agriculture, whenever it deems it necessary in the administration of this act, may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department of agriculture that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 6 [27-218] of this act, it shall register the article.

(3) If it does not appear to the department of agriculture that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this act, it shall notify the applicant of the manner in which the articles, labeling, or other material required to be submitted fails to comply with the act so as to afford the applicant an opportunity to make the necessary corrections. If upon receipt of such notice, the applicant does not make the corrections, the department of agriculture may

refuse to register the article. The department of agriculture in accordance with the procedures specified by the department of agriculture, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with the provisions of this act. Whenever an application for registration is refused or the department of agriculture proposes to suspend or cancel a registration the registrant may appeal to the department of agriculture as provided for in section 24 [27-236].

(4) The department of agriculture shall review all registered pesticides at least every two (2) years and make appropriate recommendations to the commissioner.

(5) Notwithstanding any other provision of this act, registration is not required in the case of a pesticide shipped from one plant within the state to another plant within the state by the same person.

(6) (a) The departments of health, agriculture and fish and game shall review all applications for registration of a pesticide and/or device submitted to the department of agriculture. The department of agriculture shall provide the departments of health and fish and game with a complete copy of the application, related correspondence and a statement of the department of agriculture's proposed action on the application. The departments of health and fish and game shall approve or disapprove the application within three (3) days after the receipt of the application. If the departments of health, agriculture and fish and game are in agreement with the proposed registration, the department of agriculture shall proceed with its registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide and/or device if two (2) of the departments approves of the proposed registration, the commissioner shall proceed with the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the agencies cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and fish and game.

(d) Following the interagency conference, and if requested, the administrative hearing, the proposed registration of a pesticide or device has not been resolved, the commissioner of agriculture shall appoint an advisory committee as outlined in section 28 [27-240] to resolve by majority vote the registration of any pesticide. The advisory committee's recommendations on the registration shall be accepted by the agencies and implemented by the department of agriculture.

History: En. Sec. 5, Ch. 403, L. 1971.

27-218. Prohibited acts. (1) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of section 5 [27-217] of this act, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, or if registration or reregistration has been refused, revoked, cancelled or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the manufacturer, registrant, or person for whom manufactured.

(ii) The trade and chemical name, brand, or trademark under which said article is sold.

(iii) The net weight or measure of the content; however, subject to such reasonable variations as the department of agriculture may permit.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 22 [27-234] of this act, unless the label shall bear, in addition to any other matter required by this act:

(i) The skull and crossbones.

(ii) The word "poison" prominently in red on a background of distinctly contrasting color.

(iii) A statement of an antidote for the pesticide.

(d) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder pesticide which the department of agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall, by regulations, require to be distinctly colored or discolored, unless it has been so colored or discolored. The department of agriculture may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It shall be unlawful for any person to:

(a) Detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this act.

(b) Uses for his own advantage or to reveal, other than to the department of agriculture or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians, or to veterinarians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 5 [27-217] of this act.

History: En. Sec. 6, Ch. 403, L. 1971.

27-219. Sampling and analysis. (1) The department of agriculture shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this act. The department of agriculture is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department of agriculture from sources such as the Journal of the Association of Official Analytical Chemists.

History: En. Sec. 7, Ch. 403, L. 1971.

27-220. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device:

(a) Is adulterated or misbranded;

(b) Has not been registered under the provisions of section 5 [27-217] of this act;

(c) Fails to bear on its label the information required by this act; or

(d) Is a white powder pesticide and is not colored as required under this act;

he shall affix to such article a tag or other appropriate marking, giving notice that such pesticide or device is, or is suspected of being adulterated or misbranded, not registered, fails to bear the required information on the label, is a white powder pesticide and not colored as required, and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise, without such permission, or to remove or alter the tag or marking.

(2) When an article detained or embargoed under section 8 (1) [subdivision (1) of this section] has been found by such agent to be in violation, if after thirty (30) days the violation has not been resolved, he may

petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of section 8 (1) [subdivision (1) of this section], such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such pesticide or device shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department of agriculture that the article is no longer in violation of this act, and that the expenses of such supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971.

27-221. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of ten dollars ($10). Applicators applying for a dealer or retailer license under this act shall be required to pay only a five dollar ($5) licensing fee for the dealer or retailer license. The provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide, and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed, except as provided for under section 27-223.

(3) Veterinarians licensed as provided in section 66-2204 shall not be required to be licensed to apply pesticides, provided that these veterinarians shall register with the department of agriculture each year; provided further that the veterinarians shall be required to meet all other requirements and regulations of the Montana Pesticides Act. The department when adopting regulations shall consider the professional licensing requirements for veterinarians.

History: En. Sec. 9, Ch. 403, L. 1971; amd. Sec. 2, Ch. 447, L. 1973.

Amendments

The 1973 amendment designated the language of the former section as subsection (1); inserted the third sentence in subsection (1); and added subsections (2) and (3).

27-222. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in section 9 [27-221] shall be made annually before applying pesticides in any calendar year from the department of agriculture.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the aeronautics commission of this state to operate the equipment described in the application.

History: En. Sec. 10, Ch. 403, L. 1971.

27-223. Commercial operator. The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

History: En. Sec. 11, Ch. 403, L. 1971.

27-224. Applicators and operators examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department of agriculture.

(2) The department of agriculture shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which he has applied. Provided that the applicator and operator may not be required to take a re-examination, upon renewal of licensing.

History: En. Sec. 12, Ch. 403, L. 1971.

27-225. Dealers. (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen, employed directly out of the same location or outlet and under a licensed dealer, shall not be required to obtain a license.

(2) The dealer shall furnish the department of agriculture the names and addresses of its fieldmen and salesmen selling pesticides within the state. The application for a license shall be accompanied by a fee of ten dollars ($10).

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit their license or permit issued under authority of this act before completing a sale.

(4) Licensed dealers shall not be required to obtain a retail non-commercial license or pay the fee; however, all other provisions of section 15 [27-227] shall apply.

(5) Pharmacists and veterinarians, licensed as provided for in section 66-1506, 66-1507 and section 66-2204, and certified pharmacies licensed

under section 66-1508 (b), shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department of agriculture each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department when adopting regulations shall take into account the professional licensing requirements of pharmacists, certified pharmacies and veterinarians.

History: En. Sec. 13, Ch. 403, L. 1971; amd. Sec. 3, Ch. 447, L. 1973.

Amendments

The 1973 amendment inserted the second sentence in subsection (1); substituted the third sentence of subsection (1) for a sentence reading, "Pesticide fieldmen or salesmen not under supervision of a licensed dealer shall be licensed as a dealer"; and added subsection (5).

27-226. Dealers examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department of agriculture. Dealers applying for relicensing may not be required to take an additional examination if they have met the department of agriculture's requirements.

History: En. Sec. 14, Ch. 403, L. 1971.

27-227. Retail noncommercial sale of pesticides. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department of agriculture may also limit the retail sale of such designated pesticides to quantities up to a specific number of pound(s) or gallon(s) and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Each pesticide retail outlet shall be required to obtain an annual license from the department of agriculture for purchasing and selling retail pesticides. The application for a license shall be accompanied by a minimum fee of ten dollars ($10), provided, that retailers selling only human insect repellants shall only be required to pay a licensing fee of five dollars ($5).

History: En. Sec. 15, Ch. 403, L. 1971; amd. Sec. 4, Ch. 447, L. 1973.

Amendments

The 1973 amendment added the proviso to the second sentence of subsection (2).

Effective Date

Section 5 of Ch. 447, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

27-228. Farm applicators. (1) The department of agriculture shall establish which are restricted use pesticides for agricultural use. Pesticides so restricted cannot be utilized by the farm applicator on commercial crops, land, or livestock, except as provided in (2) below.

(2) Farm applicators desiring to apply restricted use pesticides on commercial crops, land, or livestock may obtain an annual special use permit from the department of agriculture. The department of agriculture shall require the applicant to show upon written examination that he

possesses adequate knowledge to use and apply restricted agricultural pesticides and the justification for their use on commercial crops, land or livestock.

Provisions of this act relating to licensing of farm applicators shall not apply to any farm applicator applying nonrestricted pesticides on his own land, or on lands of his neighbor's; PROVIDED, that:

(a) He operates farm property and operates and maintains pesticide application equipment primarily for his own use.

(b) He is not regularly engaged in the business of applying pesticides for hire and that he does not publicly hold himself out as a pesticide applicator.

(c) He operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors.

History: En. Sec. 16, Ch. 403, L. 1971.

27-229. Licensing nonresidents. Any nonresident applying for a license under this act to operate in the state of Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department of agriculture shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: En. Sec. 17, Ch. 403, L. 1971.

27-230. Revocation of licenses and permits. The department of agriculture shall establish the policy and procedures on the revocation of licenses or permits. The department of agriculture may refuse to grant, renew, or may revoke a license or permit, as the case may require when the department of agriculture is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the conditions in the locality in which he operates or has operated, or that he has committed any of the following acts, each of which is declared to be a violation of this act:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized.

(2) Applied unapproved or illegal materials.

(3) Operate in a faulty, careless, or negligent manner.

(4) Operated faulty or unsafe equipment.

(5) Refused or neglected to comply with the provisions of this act, the rules and regulations adopted hereunder, or of any lawful order of the department of agriculture.

(6) Refused or neglected to keep and maintain the records required by this act, or to make reports when and as required.

(7) Made false or fraudulent records or reports.

(8) Operated equipment for the commercial application of a pesticide without having a license or permit.

(9) Used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit.

Decisions of the department of agriculture relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971.

27-231. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder concerning the application of pesticides. Applicators and operators operating equipment for the application of pesticides used by any state agencies, municipal corporations or any governmental agencies shall be subject to the provisions of sections 9, 10, 11 and 12 [27-221, 27-222, 27-223 and 27-224] of this act and the department of agriculture shall issue a limited commercial applicator's or operator's license without a fee which shall be valid only when such applicators and operators are applying pesticides for such agencies. Provided, that the jurisdictional health officer, state veterinarian, their duly authorized representatives or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

History: En. Sec. 19, Ch. 403, L. 1971.

27-232. Liability. The department of agriculture shall within two (2) years after the effective date of this act, require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under such rules and regulations as made by the department of agriculture.

History: En. Sec. 20, Ch. 403, L. 1971.

27-233. Report of loss or damage—effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within thirty (30) days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

(a) Name and address of claimant.

(b) Type, kind, and location of property alleged to be injured or damaged.

(c) Date the alleged injury or damage occurred.

(d) Name of person applying the pesticide and allegedly responsible for the loss or damage.

(e) Name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this act. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department of agriculture may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this act until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971.

27-234. Rules and regulations. (1) The department of agriculture shall have authority to adopt by reference without a public hearing regulations adopted under the federal insecticide, fungicide, and rodenticide act, as amended; or after due public hearing, to adopt all rules and regulations necessary to carry out the provisions of this act.

(2) The rules and regulations may prescribe methods:

(a) Of registration, application, use or restricting use, prohibiting use, offering or exposing for sale, any pesticide.

(b) Of determining whether pesticides are highly toxic to man.

(c) Of determining standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of section 6 [27-218] of this act.

(d) Of licensing commercial applicators and operators, dealers, retailers, establishing methods of record keeping for applicators, operators, dealers, and retailers, and provide for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request.

(e) Of issuing farm applicator special use permits and the maintenance and submission of records by farm applicators issued special use permits.

(f) Of collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and/or devices.

(g) Of operating and maintaining equipment used by applicators.

(h) Of developing examinations which shall be held periodically throughout the state.

(i) Of establishing the form and content of all applications for licenses and permits.

(j) Of designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department of agriculture may also limit retail sale of pesticides, up to a specific number of pounds or gallons and the concentration as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) Of revoking licenses and permits.

(l) Of registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, defiocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used.

(m) Of registering pesticide fertilizer and other chemical blends or in lieu of registration, establish licensing, inspection and fees for blending plants.

(n) Of establishing registration procedures for devices with a fee not to exceed five dollars ($5) per type of device, specifying classes of devices to be registered, and provide for additional requirements.

(3) Where the department of agriculture finds that such rules and regulations are necessary to carry out the purposes and intent of this act, such rules and regulations may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time and shall encompass all reasonable factors which the department of agriculture deems necessary to prevent damage or injury to:

(a) Persons, animals, or pollinating insects from the effect of drift or careless application.

(b) The environment.

(c) Plants, including forage plants.

(d) Wildlife.

(e) Fish and other aquatic life.

In issuing such regulations, the department of agriculture shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) Emergency power. In the event that the department of agriculture finds that an emergency exists which requires immediate action with regard to the registration, use or application of pesticides, the commissioner may, without notice or hearing, issue necessary orders, rules or regulations to protect the public health, welfare and safety. An order, rule or regulation issued under this provision shall be effective for a period no longer than sixty (60) days after it is issued. If the department of agriculture determines that the emergency order, rule or regulation should remain in effect, a public hearing under section 23 [27-235] shall be held within the sixty (60) day period to determine whether or not the order, rule or regulation should be adopted by the department of agriculture.

(5) All rules, regulations, and orders issued by the department of agriculture shall be in writing, shall be entered in full in books to be kept by the department of agriculture for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department of agriculture shall include and be based upon written findings of fact. A copy of any rule, regulation, or order certified by the department of agriculture

or its secretary shall be received in evidence in all courts of this state with the same effect as the original.

History: En. Sec. 22, Ch. 403, L. 1971.

27-235. Hearings. (1) Public hearings. Except as provided in section 22 [27-234], no rule or regulation shall be made by the department of agriculture without a public hearing upon at least twenty-one (21) days notice. The public hearing shall be held at such time and place as may be prescribed by the department of agriculture, and any interested person shall be entitled to be heard.

(a) Notice of public hearing on the adoption of rules or regulations shall be made by the department of agriculture as follows:

(i) Informal notice of the hearing will be sent to all registrants of pesticides, to all licensed pesticide applicators, including farm applicators with restricted use permits, and to all licensed pesticide dealers or retailers, provided that the notice shall be sent only to the respective group or groups directly affected by the rules and regulations. Farm applicators of nonrestricted pesticides will be given informal notice through farm groups, organizations or associations and by means of farm publications.

(ii) In all cases of public hearings for adoption of rules and regulations, notice thereof shall be published in five (5) newspapers of general circulation in the state once a week for two (2) successive weeks and the department of agriculture shall issue appropriate press releases.

(iii) Notices and publications shall be issued in the name of the state of Montana, shall be signed by the commissioner of the department of agriculture, shall specify the style and number of the proceedings, and the time and place of the hearing, and shall briefly state the purpose of the proceeding and method of procedure.

(iv) Proof of service by publication shall be made by the affidavit of the printer or publisher of the newspaper. Proof of service by mailing shall be made by the affidavit of the commissioner of the department of agriculture.

(2) Complaints. In all cases where a complaint has been made by the department of agriculture or its authorized agents or by any person that any provision of this act or any rule, regulation, or order of the department of agriculture is being or has been violated, notice of the hearing to be held on such complaint shall be given to the interested persons by one of the following methods:

(a) Personal service or service by publication in the manner as is now or shall hereafter be provided by law for the service of process in the civil action in the courts of this state; or

(b) By certified or registered United States mail with first-class postage prepaid thereon and addressed to the last known mailing address of the person or persons affected.

(c) Proof of personal service shall be made by affidavit by the officer or person authorized by law to serve process or by any agent of the department of agriculture in the manner as is now or may hereafter be provided by law for the service of process in a civil action in the district courts of this state.

(3) Except as otherwise in this act provided, the department of agriculture may act upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the department of agriculture, the department of agriculture shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department of agriculture shall enter its order and findings on complaints and petitions within thirty (30) days after the hearing. In the case of any hearing held by the department of agriculture, the persons affected or the persons testifying may be represented by legal counsel.

History: En. Sec. 23, Ch. 403, L. 1971.

27-236. Administrative appeals. Persons adversely affected by a decision or proposed decision by the department of agriculture may request a hearing before the commissioner to show cause for the action or proposed action of the department of agriculture. (1) The application for a hearing shall be acted upon within ten (10) days after its filing, and if granted, the hearing shall be held without undue delay.

History: En. Sec. 24, Ch. 403, L. 1971.

27-237. Judicial review. Any person adversely affected by the rules, regulations, or orders of the department of agriculture may obtain judicial review thereof by filing in the district court within thirty (30) days after entry of such order, a petition praying that the rule, regulation, or order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the department of agriculture, and thereupon the department of agriculture shall file in court the record of the proceeding on which it based the order. The court shall have jurisdiction on [to] affirm or set aside the order complained of in whole or in part. The finding of the department of agriculture with respect to question of fact shall be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the department of agriculture to take further testimony if there are reasonable grounds for the failure to produce the evidence in the prior hearing. The department of agriculture may modify its finding and its order by reason of the additional record and must file any modification of the findings or order with the clerk of the court.

History: En. Sec. 25, Ch. 403, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "to."

27-238. Subpoena power of department of agriculture. (1) The department of agriculture shall have the power to subpoena witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Subpoenaed witnesses shall be paid the same per diem and mileage as is authorized by the law for state employees.

(2) In case of failure or refusal on the part of any person to comply with the subpoena issued by the department of agriculture or in case of the refusal of any witness to testify as to any material matter regarding

which he may be interrogated, any district court in the state, upon good cause shown by the application of the department of agriculture, may issue a warrant of attachment for such person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with such subpoena, and to attend before the department of agriculture and produce any subpoenaed records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

History: En. Sec. 26, Ch. 403, L. 1971.

27-239. Public information. The department of agriculture as it deems proper may alone or in co-operation with other state or federal agencies publish information regarding aspects of the use and application sections or registration sections of this act. This information cannot disclose operations of selling, production, or use of pesticides by any person.

History: En. Sec. 27, Ch. 403, L. 1971.

27-240. Advisory committee. (1) The commissioner of the state department of agriculture may appoint advisory committees to study and make recommendations on special pesticide problems in the state. The advisory committee shall consist of individuals representing, equally, controlled industry, agriculture, health and wildlife. Governmental personnel, university personnel not included, shall not be represented on the advisory committee. Governmental personnel shall meet with the committee in an advisory capacity when requested by the committee. The advisory committee shall not exceed twelve (12) members. The commissioner of the department of agriculture shall establish the time period in which the advisory committee shall hold meetings. The time period shall not exceed two (2) years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the advisory committee.

(2) Each member of the advisory committee shall receive as compensation for his services the sum of twenty-five dollars ($25) per day for each day actually expended in the performance of his duties and shall be reimbursed for actual per diem and necessary traveling expenses as provided by state law.

(3) The advisory committee may request that the department of agriculture hold a public hearing as outlined in section 23 [27-235], to assist it in gathering factual data and information on the special problem(s) assigned it.

History: En. Sec. 28, Ch. 403, L. 1971.

27-241. Educational programs. The department of agriculture in co-operation with other state and federal agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing, handling, and transporting pesticides.

History: En. Sec. 29, Ch. 403, L. 1971.

27-242. Co-operation with other agencies. The department of agriculture may co-operate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this act and for securing uniformity of regulations.

History: En. Sec. 30, Ch. 403, L. 1971.

27-243. Enforcement. In enforcing this act, the department of agriculture or its duly authorized agents upon reasonable cause shall have the authority to enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable time: (1) Equipment subject to this act;

(2) Actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property; or

(3) Records on the selling or use of pesticides and the person's stock of pesticides.

History: En. Sec. 31, Ch. 403, L. 1971.

27-244. Discarding pesticides. It shall be unlawful for any person to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment.

History: En. Sec. 32, Ch. 403, L. 1971.

27-245. Violation. (1) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department of agriculture or its duly authorized agent in performance of its duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor.

(2) The department of agriculture or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. The injunction is to be issued without bond.

(3) Nothing in this act is to be construed as requiring the department of agriculture or its authorized agent to report for prosecution or for the institution of seizure proceedings minor violations of the act when it believes the public interest will be best served by other remedial action or by a suitable notice of warning in writing; nor is any part of this act to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Notwithstanding any other provisions of this section, if any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 5 [27-217] of this act, he shall, upon conviction, be fined not more than five

hundred dollars ($500) or imprisoned for not more than one (1) year or both.

(5) In all prosecutions under the registration section involving the composition of a lot of pesticide, a certified copy of the official analysis signed by the department of agriculture's authorized chemist shall be accepted as prima facie evidence of the composition.

History: En. Sec. 34, Ch. 403, L. 1971.

Separability Clause

Section 33 of Ch. 403, Laws 1971 read "Separability. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, by the court of competent jurisdiction, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Repealing Clause

Section 35 of Ch. 403, Laws 1971 read "Sections 27-201, 27-202, 27-203, 27-204, 27-205, 27-206, 27-207, 27-208, 27-209, 27-210, 27-211 and 27-212, R. C. M., 1947, are repealed."

Effective Date

Section 36 of Ch. 403, Laws 1971 read "The registration and licensing provisions of this act shall be effective January 1, 1972."

CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOODSTUFFS

(Repealed—Section 2, Chapter 256, Laws of 1973)

27-301 to 27-317. Repealed.

Repeal

Sections 27-301 to 27-317 (Secs. 1 to 13, 15 to 17, 19, Ch. 49, L. 1939; Sec. 1, Ch. 93, L. 1957; Sec. 240, Ch. 147, L. 1963; Sec. 1, Ch. 65, L. 1967; Sec. 10, Ch. 93, L. 1969), relating to the state board of food distributors and the regulation of food stores and foodstuffs, were repealed by Sec. 2, Ch. 256, Laws of 1973.

CHAPTER 4—SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

Section
27-403. Definitions.
27-406. Markets.
27-407. Establishment of minimum prices.
27-408. Licenses to producers, producer-distributors, distributors and jobbers.
27-409. Licenses—disposition of income.
27-410. Application for licenses.
27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation.
27-414.1. Limitation on extension of credit to retailers.
27-414.2. Financing prohibitions—producer and retailer.

27-403. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or co-operative association.

"Producer" means any person who produces milk for consumption within the state, selling same to a distributor.

"Distributor" means any person purchasing milk from any source, either in bulk or in packages, and distributing same for consumption within the state. Said term includes what are commonly known as jobbers and independent contractors. Said term, however, excludes all per-

sons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for consumption within the state.

"Retailer" means any person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boarding-houses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

"Dealer" means any producer, distributor, producer-distributor, jobber or independent contractor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any area of the state designated by the board as a natural marketing area.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

"Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

"Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

"Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

"Milk" means the lacteal secretion of a dairy animal or animals, including such secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh or otherwise processed and all of which is designated as grade A by a duly constituted health authority, and also includes such secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

Class I milk shall include all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this act, whether raw, pasteurized, homogenized, sterile or aseptic.

Class II milk shall include milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

Class III milk shall include milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

The board shall have power and authority to assign milk products hereafter developed to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971.

Amendments

The 1971 amendment deleted "at wholesale" before "to a distributor" in the definition of "producer"; inserted "from any source, either in bulk or in packages" in the first sentence of the definition of "distributor"; inserted the second sentence in the definition of "distributor"; inserted the definition of "retailer"; added "jobber or independent contractor" at the end of the definition of "dealer"; inserted the definition of producer prices after consumer; inserted the definitions of "wholesale prices," "jobber prices" and "retail prices"; added "and also includes such secretions * * * or any other state or nation" at the end of the definition of "milk"; deleted "raw, pasteurized and homogenized" near the beginning of the definition of "Class I milk"; added "whether raw, pasteurized, homogenized, sterile or aseptic" at the end of the definition of "Class I milk"; and made minor changes in phraseology and punctuation.

27-404. Milk control board.

Cross-References

Board continued in department of business regulation, sec. 82A-406.

Bonds of state officers and employees, sec. 6-105 et seq.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

27-405. General powers of the milk control board.

Cross-References

Functions transferred to department of business regulation, sec. 82A-403(2).

27-406. Markets. Pursuant to the declaration of policy relating to milk set forth in section 27-401, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act.

(a) and (b) * * * [Same as parent volume.]

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by the milk control board in this state at the time of passage of this act which are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, ch. 107, L. 1971.

Amendments

The 1971 amendment deleted from the end of the preliminary paragraph a proviso reading "provided, that at all times there shall not be less than five (5) natural marketing areas in the state"; substituted "the" for "any previously existing" before "milk control board" in subdivision (c); and made a minor change in phraseology.

27-407. Establishment of minimum prices. The board is hereby authorized and directed to fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state.

The board shall establish such prices by means of flexible formulas which it shall adopt by official order and which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

Prior to promulgation of such formulas the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

The board shall, at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

Such specific factors may include, but shall not be limited to, the following items:

(1) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(2) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(3) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(4) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(5) The prices of butter-nonfat dry milk, and cheese;

(6) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(7) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(8) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(9) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it at a public hearing by the consuming public or the milk industry, the board shall, at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced at such hearing, shall make written findings and conclusions and shall fix by official order:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

Each order establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order establishing or revising milk pricing formulas, the board shall hold a public hearing on such matter in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof.

History: En. Sec. 7, ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted the first two paragraphs; deleted "Orders fixing minimum prices for class I milk" from the beginning of the present third paragraph; substituted "promulgation of such formulas" for "the fixing of prices for class I milk in any market" in the first sentence of the third paragraph; inserted "jobbers, retailers" near the end of the fifth paragraph; substituted "thirty (30)" for "ten (10)" near the beginning of the sixth paragraph; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the beginning of the sixth paragraph; inserted "in establishing the formulas and in particular" near the middle part of the sixth paragraph; inserted the numbered subdivisions and the sentence preceding them; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices on class I milk" near the beginning of the first paragraph following the numbered subdivisions; substituted "thirty (30)" for "ten (10)" in the first paragraph following the numbered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the middle part of the first paragraph following the numbered subdivisions; inserted the lettered subdivisions and the first paragraph following them; deleted a sentence reading "The minimum prices to be paid by the milk dealers to producers and others for milk" from the beginning of the present second paragraph following the lettered subdivisions; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices" near the beginning of the second paragraph following the lettered subdivisions; deleted former paragraphs (b) and (c) and another paragraph after the present fifth paragraph following the lettered subdivisions; substituted "establishing or revising milk pricing formulas" for "fixing prices to be charged or paid for class I milk in any of its forms, classes, grades or uses" near the beginning of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment of milk pricing formulas" for "fixing of prices" at the end of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices for class I milk" in the second proviso of the sixth paragraph following the lettered subdivisions; added the last three paragraphs; deleted former subsection (2), for text of which see parent volume; and made minor changes in style, phraseology and punctuation.

Cross-References

Functions continued in board, sec. 82A-406(3).

27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this act apply, it shall be unlawful for any producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless such dealer be duly licensed as provided by this act. It shall be unlawful for any such person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this act. The board may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or jobber" in the first sentence.

27-409. Licenses—disposition of income. No producer, producer-distributor, distributor or jobber shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this act by the

milk control board. The annual fee for such license from the milk control board shall be two dollars ($2), shall be due and payable on or before the first day of July, and shall be deposited by said board to the credit of the general fund.

In addition to such annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) to (c) * * * [Same as parent volume.]

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth [15th] day of July, October, January and April of each year, and the amount of such assessment shall be computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be effected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of milk control board moneys in such fund.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year.

History: En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or jobber" near the beginning of the first sentence of the first paragraph; inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the latter part of the first sentence of the first paragraph; deleted "commencing in the year 1959" after "first day of July" in the second sentence of the first paragraph; and deleted "commencing in July of 1959" after "April of each year" from the first paragraph following the lettered subdivisions.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are necessary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cos-

metic Act, and such application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971.

Amendments

The 1971 amendment inserted "or jobber" near the beginning of the first sentence; and inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the second sentence.

27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation. (1) The board may decline to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this act or of any lawful order or regulation of the board, the failure or refusal to make required statements or reports, and aggravated delinquency in the payment of license or assessment fees, or any of them, shall be deemed causes for which the board may, at its discretion, suspend or revoke a license, provided that no license shall be fully revoked except upon the approval of a majority of all members of the board.

(2) In lieu of a suspension or revocation of a license the board may assess a civil penalty not to exceed five hundred dollars ($500) per day for each daily failure to comply with or each daily violation of the provisions of this act or of any lawful order or regulation of the board; and if the person against whom such civil penalty is assessed fails or refuses to pay such civil penalty forthwith, the board is empowered and directed to collect such civil penalty by a civil proceeding in the district court of the first judicial district. Such civil penalties shall be construed as civil and not criminal in nature. Any moneys received by the board as a result of collection of civil penalties shall be paid into the state general fund.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971.

Amendments

The 1971 amendment designated the former provisions as subsection (1); inserted "or assessment" after "in the payment of license" in the second sentence of subsection (1); added subsection (2); and made minor changes in style and punctuation.

27-414. Rules of fair trade practices.

Promotional Schemes

Contest awarding college scholarships to winning applicants was not prohibited by this section where applicants were not required to purchase dairy products in order to participate and contest did not directly or indirectly affect the price of milk charged by the dairy or paid by its customers; promotional scheme intended to draw noncustomers into purchasing a dairy's milk products is not prohibited by this section unless the contest affects the price of milk charged by the dairy or paid by its customers. Jersey Creamery, Inc. v. Board of Milk Control of the Montana Department of Business Regulation, — M —, 502 P 2d 30.

27-414.1. Limitation on extension of credit to retailers. No sale or delivery shall be made by any producer-distributor, distributor or jobber to any retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors and jobbers

shall bill retailers at least monthly. In no event shall any producer-distributor, distributor, or jobber extend more than fifteen (15) days' credit after billing to a retailer, nor shall any retailer accept or receive delivery of such milk without agreement to pay in cash therefor within fifteen (15) days after regular billing therefor. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of producer-distributors, distributors, or jobbers involved in violation hereof shall be suspended or revoked as determined by the board in its discretion.

History: En. Sec. 8, Ch. 107, L. 1971.

Title of Act

An act to amend and add new sections to the Montana Milk Control Law; amending section 27-403, R. C. M. 1947, relating to definitions, by adding definitions thereto; amending section 27-406, R. C. M. 1947, relating to markets, by removing the requirement there be at least five (5) natural marketing areas in the state; amending section 27-407, relating to minimum prices, to provide for flexible price formulas and to specify how base plans may be established and under what circumstances area-wide or state-wide pooling arrangements may be adopted; amending sections 27-408, 27-409, and 27-410, relating to licensing, to include jobbers and imported milk within the jurisdiction of the milk control board; amending section 27-411, R. C. M. 1947, to provide that civil penalties may be assessed by the milk control board in lieu of suspension or revocation of license; repealing section 27-427, R. C. M. 1947, relating to local advisory boards; adding new sections to provide a time limitation on credit which may be extended to retailers and to prohibit financing of producers and retailers by distributors; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

27-414.2. Financing prohibitions—producer and retailer. No producer, producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any retailer, and no producer, producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer; and no producer-distributor, distributor, or jobber licensed under this act shall hereafter advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of any producer, and no producer-distributor, distributor, or jobber shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer; provided, however this section shall not be construed so as to prohibit any producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

This section is not to be construed to prohibit a producer from requesting and a distributor from granting an advance payment for milk prior to the regular date of payment therefor or to limit in any way the

right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

History: En. Sec. 9, Ch. 107, L. 1971.

Separability Clause

Section 11 of Ch. 107, Laws 1971 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clauses

Section 10 of Ch. 107, Laws 1971 read "Section 27-427, R.C.M. 1947, is repealed."

Section 12 of Ch. 107, Laws 1971 repealed all acts and parts of acts in conflict therewith.

27-426. Bonds required of distributors—amounts, etc.

Accrual of Cause of Action

Three-year statute of limitations provided under section 93-2607 did not bar action on milk distributors bond where distributor had pursued administrative and court proceedings in intervening three-year period and surety had knowledge of earlier proceedings since cause of action did not accrue until plaintiff had right of action and plaintiff had no right of action until administrative remedies had been exhausted. Montana Milk Control Board v. Hartford Accident & Indemnity Co., 153 M 299, 456 P 2d 302.

27-427. Repealed.

Repeal

Section 27-427 (Sec. 11, Ch. 192, L. 1959), relating to local advisory boards, was repealed by Sec. 10, Ch. 107, Laws 1971, and by Sec. 2, Ch. 272, Laws 1971. The repeal by Ch. 272 was implemented by Executive Reorganization Order 7-71, signed by the Governor on November 11, 1971, effective November 15, 1972.

CHAPTER 5—OLEOMARGARINE

(Repealed—Section 9, Chapter 99, Laws of 1953; Section 1, Chapter 286, Laws of 1973)

27-501 to 27-503. Repealed.

Repeal

Sections 27-501 to 27-503 (Secs. 1 to 3, Ch. 138, L. 1949; Secs. 1, 2, Ch. 99, L. 1953), relating to oleomargarine products, were repealed by Sec. 1, Ch. 286, Laws 1973.

27-505. Repealed.

Repeal

Section 27-505 (Sec. 5, Ch. 138, L. 1949), relating to district court jurisdiction of violations of the oleomargarine act, was repealed by Sec. 1, Ch. 286, Laws 1973.

27-507 to 27-523. Repealed.

Repeal

Sections 27-507 to 27-523 (Secs. 7 to 20, Ch. 138, L. 1949; Secs. 3, 4, 7, Ch. 99, L. 1953), relating to regulation of oleomargarine products, were repealed by Sec. 1, Ch. 286, Laws 1973.

CHAPTER 6—FOOD SERVICE ESTABLISHMENTS, MARKETS AND MANUFACTURERS

Section
27-612. Definition of terms.
27-614. Application for license—fee.

27-612. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) to (5) * * * [Same as parent volume.]

(6) "Person" means a person, partnership, corporation, association, co-operative group, or other entity engaged in operating, owning, or offering services of an establishment as included in this section.

(7) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor or perishable food dealer.

(8) to (10) * * * [Same as parent volume.]

(11) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971.

Amendments

The 1971 amendment substituted "an establishment as included in this section" at the end of subdivision (6) for "a food manufacturing establishment, meat market, food service establishment, or frozen food plant"; added "or perishable food dealer" at the end of subdivision (7); and added subdivision (11).

27-613. Licenses required, etc.

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

27-614. Application for license—fee. (1). * * * [Same as parent volume.]

(2) For each license issued, the department shall collect a fee of ten dollars ($10). It shall deposit receipts in the state general fund.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973.

Amendments

The 1973 amendment increased the license fee in subdivision (2) from $5.00 to $10.00.

CHAPTER 7—FOOD, DRUG AND COSMETIC ACT

Section
27-702. Definition of terms.
27-703. Prohibited acts enumerated.
27-721. Procedure for adopting, amending or repealing regulations—hearings.

27-702. Definition of terms. For the purpose of this act—

(a) to (s) * * * [Same as parent volume.]

(t) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common

use in food) to be safe under the conditions of its intended use; except that such term does not include:

(1) to (4) * * * [Same as parent volume.]

(u) (Color and color additive)

(1) to (3) * * * [Same as parent volume.]

(v) * * * [Same as parent volume.]

(w) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

(x) The term "consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. Such term does not include—

(1) any tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) any drug subject to the provisions of section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(y) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(z) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971.

Amendments

The 1971 amendment added subdivisions

(w), (x), (y) and (z), and made minor changes in punctuation and style.

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

27-703. Prohibited acts enumerated. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(a) to (f) * * * [Same as parent volume.]

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same affect (effect) signed by, and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food drug, device or cosmetic.

(h) to (l) * * * [Same as parent volume.]

(m) (Counterfeiting trade-marks)

(1) to (3) * * * [Same as parent volume.]

(n) to (o) * * * [Same as parent volume.]

(p) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this act and of regulations promulgated under authority of this act; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons

(1) are engaged in the packaging or labeling of such commodities, or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(q) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971.

Amendments

The 1971 amendment added subdivisions (p) and (q) and made minor changes in punctuation and style.

27-721. Procedure for adopting, amending or repealing regulations—hearings. (a) The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the state board. The state board is hereby authorized to adopt by reference the regulations promulgated by the Food and Drug Administration under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(b) * * * [Same as parent volume.]

(c) Before promulgating any regulations contemplated by section 27-709; 27-711 (j); 27-712; 27-715 (d), (f), (g), (h), (m), and (p); 27-716 (c) or 27-720 (b), the state board shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the state board (which date shall not be prior to ten (10) days after its promulgation). Such regulation may be amended or repealed in the same manner as is pro-

vided for its adoption, except that in the case of a regulation amending or repealing any such regulation the state board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date. No hearing will be required for promulgation by reference of those regulations promulgated under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971.

Amendments

The 1971 amendment added references to the Fair Packaging and Labeling Act at the end of subsection (a) and at the end of subsection (c).

27-724, 27-725. Repealed.

Repeal

Sections 27-724 and 27-725 (Secs. 24, 25, Ch. 307, L. 1967), relating to the unlawful possession of hallucinogenic drugs and providing penalties therefor, were repealed by Sec. 14, Ch. 314, Laws 1969.

CHAPTER 8—FLOUR AND BREAD

Section
27-801. Definitions.
27-802. Vitamin and mineral content requirements for flour—exceptions.
27-803. Vitamin and mineral content requirements for bread.
27-804. Enforcement—modification of requirements.
27-805. Penalties for violations.

27-801. Definitions. When used in this act, unless the context otherwise requires: (1) "Flour" includes and shall be limited to the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour, and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour as defined in (1) above whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including vienna bread, french bread, and italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dogs rolls, parker house rolls; and hard rolls, such as vienna rolls, kaiser rolls, yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Executive officer" means the executive officer of the health department of the state of Montana.

(5) "Board" means the board of health of the state of Montana.

(6) "Department" means the department of health of the state of Montana.

(7) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls.

History: En. Sec. 1, Ch. 274, L. 1971.

Compiler's Notes

The preamble to the act states "WHEREAS, there exists in the diets in this country a widespread deficiency of certain food ingredients essential to the health and well-being of the people, it is necessary and advisable to protect so far as may be possible to the health of the people of this state against such deficiency by providing for the enrichment of certain kinds of flour and bread, to increase the content of such essential ingredients, normally present in wheat. In the accomplishment of such purposes, it is necessary and advisable to promote uniformity in the laws applicable to interstate and to intrastate shipments of such foods."

Title of Act

An act to require the enrichment of flour and bread to meet certain standards of vitamin and mineral content; and to fix penalties for violation of this act.

27-802. Vitamin and mineral content requirements for flour—exceptions. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour: not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine; not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin; not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacin-amide; not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the board shall by regulation prescribe, certifying that such flour will be (1) resold to a distributor, baker or other processor, or

(2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this act, or

(3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: En. Sec. 2, Ch. 274, L. 1971.

27-803. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine; not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin; not less than 10.0 milligrams and not more than 15.0 milligrams of niacin; not less than 8.0 milligrams and

not more than 12.5 milligrams of assimilable iron (Fe). The requirements for vitamin and mineral content specified in sections 2 [27-802] and 3 [27-803] are identical with those of the federal standards.

History: En. Sec. 3, Ch. 274, L. 1971.

27-804. Enforcement—modification of requirements. (1) The board is hereby charged with the duty and authority to make, amend or rescind rules, regulations and orders for the efficient enforcement of this act.

(2) Whenever the vitamin and mineral requirements set forth in sections 2 [27-802] and 3 [27-803] of this act are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this act, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under authority of the Federal Food, Drug, and Cosmetic Act of 1938, as amended. (Title 21 U.S.C. 301 et seq.).

(3) In the event of findings by the executive officer that there is an existing or imminent shortage of any ingredient required by sections 2 [27-802] or 3 [27-803] of this act, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this act, the executive officer shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the executive officer. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the executive officer on his own motion may, and upon receiving the sworn statements of ten (10) or more persons subject to this act that they believe such a shortage exists or is imminent, shall, within twenty (20) days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The executive officer shall publish notice of any such hearing at least ten (10) days prior thereto. Whenever the executive officer has reasons to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten (10) days notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such a shortage no longer exists, he shall issue an order to become effective not less than thirty (30) days after publication thereof revoking such previous order; provided, however, that undisposed flour stocks of flour on hand at the effective date, of such revocation order, or flour manufactured prior to such effective date for sale in this state may thereafter be lawfully sold or disposed of.

(4) All orders, rules and regulations adopted by the board pursuant to this act shall be published in the manner hereinafter prescribed, and, within the limits specified by this act, shall become effective upon such date as the board shall fix.

(5) Whenever under this act publication of any notice, order, rule or regulation is required, such publication shall be made at least once in at least one (1) daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this act, the department or its authorized agents may take samples for analysis, conduct examinations and investigations, and enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof and inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling.

History: En. Sec. 4, Ch. 274, L. 1971.

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

27-805. Penalties for violations. Any person who violates any of the provisions of the act or the orders, rules or regulations promulgated by the board under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding one hundred dollars ($100) or to imprisonment not to exceed thirty (30) days.

History: En. Sec. 5, Ch. 274, L. 1971.

Repealing Clause

Section 6 of Ch. 274, Laws 1971 repealed all acts and parts of acts in conflict therewith.

CHAPTER 9—DISPENSING OF DRUGS BY PRACTITIONERS

Section

27-901. Definitions.
27-902. Practices declared unlawful between drug companies and medical practitioners.
27-903. Dispensing of drugs by medical practitioners unlawful—exceptions.
27-904. Practices declared unlawful between medical practitioners and pharmacies.
27-905. Enforcement proceedings by county attorneys.
27-906. Existing ownership of pharmacy.

27-901. Definitions. As used in this act:

(a) The term "medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiropody (podiatry), and in such practice to administer or prescribe drugs.

(b) The term "drug" means any article:

(1) Recognized in the official United States pharmacopeia, the official national formulary, or in any supplement to such pharmacopeia or formulary.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(3) Intended to affect the structure or any function of the body of man.

(4) Intended for use as a component of any article described in clause (1), (2) or (3) of this paragraph, but such term does not include any device or any components of a device.

(c) The term "device" means any instrument, apparatus, or contrivance intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(2) To affect the structure or any function of the body of man.

(d) The term "pharmacy" means an office, pharmacy, drugstore, or other establishment which engages in the sale of drugs at retail.

(e) The term "community pharmacy," when used in relation to a medical practitioner, means a pharmacy situated within ten (10) miles of any place at which such medical practitioner maintains an office for professional practice.

(f) The term "drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs, but such term does not include a pharmacy.

(g) The term "person" means any individual, and any partnership, firm, corporation, association, or other business entity.

(h) The term "state" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971.

Title of Act

An act to regulate trade in drugs by prohibiting the dispensing of drugs by medical practitioners and their participation in profits from the dispensing of such products, except under certain circumstances, and for other purposes.

27-902. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(a) For a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(b) For a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment, and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment.

(c) For a medical practitioner to solicit or to knowingly receive from a drug company, or for a drug company to pay or to promise to pay to a medical practitioner, any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the

volume of wholesale or retail sales at any place of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971.

27-903. Dispensing of drugs by medical practitioners unlawful—exceptions. Except as otherwise provided by this section, it shall be unlawful for a medical practitioner to engage directly or indirectly in the dispensing of drugs. Nothing in this subsection shall prohibit:

(1) A medical practitioner from furnishing a patient any drug in an emergency.

(2) The administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner.

(3) Dispensing a drug to a patient by a medical practitioner where there is no community pharmacy available to the patient.

(4) The dispensing occasionally, but not as a usual course of doing business by a medical practitioner.

(5) A medical practitioner from dispensing drug samples.

History: En. Sec. 3, Ch. 311, L. 1971.

27-904. Practices declared unlawful between medical practitioners and pharmacies. (a) It shall be unlawful for a medical practitioner to own directly or indirectly a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under section 3 [27-903].

(b) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy, or for a community pharmacy knowingly to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971.

27-905. Enforcement proceedings by county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceeding may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as may be possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971.

27-906. Existing ownership of pharmacy. The provisions of subsection (a) of section 4 [27-904 (a)] shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971.

REVISED CODES OF MONTANA

VOLUME 3
Part 1
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 3 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3 (PART 1) THROUGH VOLUME 504, PACIFIC REPORTER (2nd SERIES)

Edited by
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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

Section 28-103. Definitions, as used in this chapter.
28-105. Powers of board.
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28-111. Determination of costs of fire protection—certification—tax levy.
28-119. Sawdust piles—restrictions.
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28-101. State board of forestry created—membership.

Cross-References

Board abolished and functions transferred, sec. 82A-1505(2).

28-103. Definitions, as used in this chapter. Forest land, for fire protection purposes, is defined as any land which has enough timber, standing or down; slash or brush, to constitute in the judgment of the board a fire menace to life or property, provided, that grassland and agricultural areas are included when such areas are intermingled with or contiguous to areas of forest land.

Lands for conservation purposes are defined as all forest lands within the state of Montana which are officially classified by the board as forest lands in accordance with 28-104 (b).

Forest fire is defined as a fire burning uncontrolled on forest lands.

Organized forest fire protection district is defined as a definite forest land area, the boundaries of which are fixed, and wherein, forest fire protection is provided through the medium of an agency recognized by the board.

Recognized agency is defined as an agency representing owners of forest lands in an organized forest fire protection district, organized for the purpose of providing forest fire protection in such district and recognized by the board as giving adequate fire protection to such forest lands in accordance with rules and regulations prescribed by the board. Any

public agency administering and protecting forest lands may also be recognized by the board as such an agency.

Forest fire season is defined as the period of each year beginning on May first and ending on September thirtieth, inclusive; provided, however, that in the event of excessive or great fire danger, this period may be expanded when in the judgment of the state forester dangerous fire conditions exist. When so expanded, the state forester shall give public notice.

Forest fire protection is defined as the work of prevention, detection and suppression of forest fires.

Protection zone is a broad area within which the forest fire protection costs are approximately the same. Protection zones will be designated by the state forester, with the approval of the board.

Conservation is defined as the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of the state of Montana.

Owner is defined as the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971.

Amendments

The 1971 amendment inserted the present second paragraph defining lands for conservation purposes; and inserted the present ninth paragraph defining conservation.

28-105. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts; provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of

this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To co-operate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967.

Amendments

The 1963 amendment added the provisos to paragraph (b).

The 1967 amendment in subsection (b) decreased from 75% to 51% the number of property owners required to approve creation of the proposed district.

Effective Dates

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Section 2 of Ch. 149, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

28-109. **Duty of owner of classified forest land.** Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a), above.

(c) Class III Land. Shall include lands primarily suitable for grazing or other agricultural purposes including structures and improvements which are within the forest fire protection areas but not meeting the detailed definitions of lands described in subsection (b), above. These lands may only be listed for payment when requested by the landowner at rates determined by the state forester and shall be submitted to the county assessor for collection and disposition as provided in section 28-111.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967.

Amendments

The 1967 amendment added subdivision (c) in the second paragraph.

Effective Date

Section 2 of Ch. 148, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-111. **Determination of costs of fire protection—certification—tax levy.** The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in the agency fund to the credit of the state forester.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the last sentence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

28-119. **Sawdust piles—restrictions.** Prior to each fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas will treat, dispose of, remove or reduce the hazards created so that such accumulation of sawmilling waste does not constitute a fire hazard.

No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of sawlogs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the state forester. In the event that burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with regulations issued by the board of forestry.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969.

Amendments

The 1969 amendment inserted the first paragraph and inserted "In the event that burning is the disposal method elected," in the last sentence of the second paragraph.

28-123. Disposition of moneys. The following funds may be expended as directed by the board for fire prevention, detection, suppression and forest, forest range, forest water, and forest soil conservation: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other co-operative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971.

Amendments

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410, all moneys received from all public agencies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

The 1971 amendment added "and forest, forest range, forest water, and forest soil conservation" to the introductory sentence; and made a minor change in punctuation.

28-124. Disbursement of moneys. All co-operative moneys collected under the authority of section 28-111 and appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be transferred to the earmarked revenue fund. Such moneys may then be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963.

Amendment

The 1963 amendment divided the former first sentence into two sentences; inserted "under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

28-125. Ex officio fire wardens—powers. The officers, employees and persons hereinafter designated are hereby declared ex officio fire wardens to serve without compensation for the purposes of enforcing the penal provisions of this act, enforcing any rule or regulation promulgated by the Montana state board of forestry pursuant to this act, and enforcing any state or federal forest laws: Members of the Montana state board of forestry, the state forester and all regular employees of his office, officers of organized forest protection districts, members of the Montana highway patrol, all field officers, in the United States forest service residing in Montana, game and deputy game wardens, officers of the national park service and the Indian service situated in Montana. For those purposes set forth above, such ex officio fire wardens shall have all the powers vested by section 81-1413.

History: En. Sec. 25, Ch. 128, L. 1939; amd. Sec. 1, Ch. 276, L. 1971.

Amendments

The 1971 amendment inserted "enforcing any rule * * * forest laws" in the first sentence; inserted "For those purposes set forth above" in the second sentence; and made a minor change in phraseology.

CHAPTER 3—ESTABLISHMENT OF STATE FOREST AND CONSERVATION EXPERIMENT STATION

Section 28-304. Reports—disposition of income.

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

Cross-References

Board of regents to exercise powers and duties of state board of education, sec. 75-5617 (2).

CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

Section 28-408. Supervision by state forester.
28-410. Contracts with owners of forest lands.
28-412. Certificate of clearance.

28-401 to 28-403. (2778.5 to 2778.7) Repealed.

Repeal

Sections 28-401 to 28-403 (Secs. 5 to 7, Ch. 95, L. 1927; Sec. 1, Ch. 81, L. 1931; Secs. 1, 2, Ch. 34, L. 1941; Secs. 1, 2, Ch. 83, L. 1949; Sec. 1, Ch. 18, L. 1953; Sec. 1, Ch. 230, L. 1955), relating to burning of forest debris and disposal of slashings, were repealed by Sec. 4, Ch. 147, Laws 1971.

28-408. Supervision by state forester. The state forester, under such rules as the state board of forestry may provide, shall supervise the reduction or management of any fire hazard to the property of others created by the cutting of any forest product on private land in the state of Montana.

The reduction or management of fire hazards referred to in this act shall be in keeping with modern and progressive forest practices and more effective fire control and may include or be limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971.

Amendments

The 1971 amendment inserted "shall be in keeping with modern and progressive forest practices and more effective fire control and" in the second paragraph.

Cross-References

Board of forestry abolished and functions transferred, sec. 82A-1505 (2).

State forester's position abolished and functions transferred, sec. 82A-1505 (3).

28-410. Contracts with owners of forest lands. The state forester is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Montana whereby slash is created, and under said contract the state forester may assume all responsibility for the reduction or management of any fire hazard; any such contract shall provide the amount to be paid by the owner or operator to the state forester by reason of his agreement to assume the reduction or management, of such fire hazard. Said amount shall not exceed two dollars ($2.00) for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971.

Amendments

The 1971 amendment increased the amount specified in the final sentence from one dollar to two dollars for each one thousand feet.

28-412. Certificate of clearance. Any owner or operator who has entered into a contract with the state forester for the reduction or management of any fire hazard and upon payment of the contract price in accordance with the terms of said contract and the full compliance with the terms of said contract by such owner or operator, shall be granted a certificate of clearance and be relieved of any and all further liability

and responsibility for the removal or reduction of any such fire hazard; provided, however, the state forester may require a cash bond, equivalent to the contract price, and conditioned upon the faithful performance of said contract, be deposited by the owner or operator with the state forester.

History: En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971.

Amendments

The 1971 amendment changed the proviso so as to make the cash bond discretionary with the state forester rather than mandatory.

Repealing Clause

Section 4 of Ch. 147, Laws 1971 read "Sections 28-401 through 28-403, R. C. M., 1947, are repealed."

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

Section 28-602. Functions of the board.
28-603. Powers of board.
28-604. Lands to which applicable.

28-601. Authority of county commissioners to protect range, etc.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-602. Functions of the board. The functions of the respective boards of county commissioners with respect to rural fire control shall be to carry out the specific authorities and duties hereinafter imposed.

(1). * * * [Same as parent volume.]

(2) To appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they may deem necessary. The county rural fire chief may be a regular county officer or other person, who in the opinion of the board is the best qualified to perform the duties of this office and who shall serve without additional compensation for the duties hereby imposed. All district fire chiefs shall serve without compensation;

(3). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973.

Amendments

The 1973 amendment substituted "may" for "shall" following "fire chief" near the beginning of the second sentence in subdivision (2); and inserted "or other person," following "regular county officer" in the second sentence of subdivision (2).

28-603. Powers of board. (1) to (4) * * * [Same as parent volume.]

(5) The board is authorized to appropriate from the general fund of the county not to exceed fifteen thousand dollars ($15,000) per year for the purchase, care and maintenance of fire-fighting equipment, or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when deemed necessary; or if the general fund is budgeted to the full limit, the board may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed fifteen thousand dollars ($15,000).

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971.

Amendments

The 1971 amendment increased the maximum appropriation and levy under subsection (5) from $5,000 to $15,000.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-604. **Lands to which applicable.** The provisions of this act are not applicable to any organized forest protection district or fire district defined in sections 28-101 to 28-129, or sections 11-2003 through 11-2010, or any organized fire protection district organized and operating under other legal authority. This act shall apply to all lands not protected by federal, state, municipal or private protective agencies organized under the laws of the state of Montana.

History: En. Sec. 4, Ch. 173, L. 1945; amd. Sec. 2, Ch. 229, L. 1973.

Amendments

The 1973 amendment inserted "or sections 11-2003 through 11-2010" in the first sentence.

Effective Date

Section 3 of Ch. 229, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

CHAPTER 7—TRANSPORTATION OF CONIFEROUS TREES

Section 28-701. Bill of sale required for transportation of coniferous trees on highway.

28-701. **Bill of sale required for transportation of coniferous trees on highway.** (1) It shall be unlawful and constitute a misdemeanor for any person to transport on the highways of this state, more than ten (10) coniferous trees without having in his possession a bill of sale showing his title for the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) The foregoing provisions do not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agents;

(d) the transportation of coniferous trees by a common carrier.

History: En. Sec. 1, Ch. 137, L. 1967.

Title of Act

An act declaring it unlawful to transport on the highways of this state more than ten (10) coniferous trees, unless the transporter has a bill of sale in his possession showing his title for the trees and providing a penalty for violation of this act.

TITLE 29—FRAUDULENT CONVEYANCES

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-101. Definition of terms.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Fraudulent Conveyance Act: Idaho, New Mexico, Ohio, Oklahoma, and Virgin Islands.

29-104. Conveyances by insolvent.

Insolvency as Matter of Law

Debtor was insolvent as a matter of law at time he conveyed his ranch property to his children where his total liabilities exceeded his total assets by over $7,000, including in that computation an $11,000 debt to the Federal Land Bank on which debtor remained principal debtor despite a purported assumption of the obligation by his son. Baker Nat. Bank v. Lestar, 153 M 45, 453 P 2d 774.

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair consideration and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to set aside the conveyance. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P 2d 703, 705.

CHAPTER 2—CERTAIN INSTRUMENTS AND TRANSFERS, WHEN VOID

29-206. (6944) Other provisions.

Compiler's Notes

Sections 18-201 to 18-205, referred to in this section in the parent volume, were repealed by Sec. 10-102, Ch. 264, Laws 1963.

29-210. (8606) Question of fraud—how determined.

Sufficiency of Evidence

Finding of district court that transferor of property had no intent to defraud creditors was supported by substantial evidence of: a substantial cash payment to transferor; application of entire proceeds to transferor's debts; lack of secrecy in transaction; application of wife's interest in part of property transferred to husband's debts; sale of fractional interest in mother's estate to brother also holding fractional interest therein, who presumably would be willing to pay more than stranger; and apparent existence of sufficient remaining assets with which to discharge transferor's remaining indebtedness. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

30-208. (8188) **What dealings with debtor exonerate guarantor.**

Execution and Delivery of Note as Evidence

Debtor's execution and delivery to creditor of note as evidence of debt rather than as payment thereof did not exonerate debtor's surety in the absence of prejudice to the surety. Falls Implement Co. v. General Ins. Co. of America, 152 M 250, 448 P 2d 675.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendors, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. Scott v. Kyhl, 141 M 523, 379 P 2d 803.

References

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

CHAPTER 3—INDEMNITY

30-301. (8163) **Indemnity defined.**

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-307. (8169) **Rules for interpreting agreement of indemnity.**

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-308. (8170) **When person indemnifying is a surety.**

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

30-407. (8201) **Surety discharged by certain acts of the creditor.**

Impairment of Remedies or Rights

Under subdivisions 1 and 2 of this section a surety is discharged when his remedies or rights are impaired by an act of the creditor. United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Prejudice of Surety Required for Release

Subdivision 3 of this section and section 30-502 relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed. United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. Scott v. Kyhl, 141 M 523, 379 P 2d 803.

CHAPTER 5—RIGHTS OF SURETIES AND CREDITORS

30-502. (8203) Surety may require the creditor to proceed, etc.

Prejudice of Surety Required for Release

Subdivision 3 of section 30-407 and this section relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed. United States v. Helena Office Supply Co., 256 F Supp 53, 54.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) Repealed.

Repeal

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relating to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

Chapter 1. Montana highway patrol—creation—powers and duties, 31-103 to 31-105.1, 31-110, 31-114, 31-117, 31-119, 31-123, 31-126 to 31-130, 31-135, 31-138, 31-142, 31-145 to 31-147, 31-149, 31-163 to 31-174.
2. Highway patrolmen's retirement system, 31-201, 31-205, 31-206, 31-209, 31-210, 31-222.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION—POWERS AND DUTIES

Section 31-103. Organization—rules and regulations.
31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.
31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal.
31-105.1. Salaries paid out of earmarked revenue fund.
31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
31-114. Highway patrol—fees—fines and forfeitures.
31-117. Drivers' examination section of highway patrol.
31-119. Vehicle — motor vehicle — farm tractor — school bus — bus — motorcycle.
31-123. Chief—board.
31-126. What persons are exempt from license.
31-127. What persons shall not be licensed.
31-128. Classification of chauffeurs—special restrictions.
31-129. Instruction and traffic education permits and temporary licenses.
31-130. Application for license, instruction permit or motorcycle endorsement.
31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof.
31-138. Duplicate certificates.
31-142. Authority of board to cancel licenses.
31-145. When court to forward license to board and report convictions.
31-146. Mandatory revocation of license by board or chief upon proper authority.
31-147. Authority of board to suspend license or driving privilege or issue probationary license.
31-149. Period of suspension or revocation.
31-163. Driver license compact enacted—text.
31-164. Highway patrol board as licensing authority—information and documents furnished.
31-165. Reimbursement of compact administrator.
31-166. Governor as executive head.
31-167. Report to highway patrol board of suspension or revocation of licenses.
31-168. Offenses furnishing ground for suspension or revocation of license.
31-169. Review of administrative actions.
31-170. Authority of board to issue identification cards.
31-171. Rules and regulations for identification cards.
31-172. Immunity of public entities for inaccurate identification cards.
31-173. Agents for issuance of identification cards.
31-174. Fees for identification cards.

31-102. Board defined—chairman.

Cross-References

Board abolished and functions transferred, sec. 82A-1205(2).

31-103. Organization—rules and regulations. The Montana highway patrol board shall maintain a permanent place of business at the state capital and shall meet at least once each month for the purpose of transacting its business and it may make, promulgate and amend rules and regulations which prescribe procedures and practice requirements of the Montana highway patrol. The Montana highway patrol shall provide for clerical help, provide for the maintenance of the patrol and for the employment and supervision of the patrol in conformity with the provisions of this act. The Montana highway patrol shall furnish the governor of the state of Montana with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state of Montana.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971.

Amendments

The 1971 amendment added to the end of the first sentence the clause authorizing rules and regulations.

Effective Date

Section 2 of Ch. 245, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement. The board shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose, and necessary traveling expenses. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with the approval of the board and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;

2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;

3. Prescribe the official uniform of the Montana highway patrol;

4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;

6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;

7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967.

Amendments

The 1967 amendment substituted "chief" for "supervisor" wherever it appears in the first paragraph; inserted

"have the rank of colonel and shall" after "who shall"; substituted "fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose" for "of seven thousand dollars ($7,000.00) per annum" after "shall receive a salary"; deleted "for such Montana highway patrol" at the end of the first paragraph; and substituted "patrolman" for "employee" in subparagraph 6.

Cross-References

Attorney general to select patrol chief, sec. 82A-1205(2).

Functions of patrol and chief transferred, sec. 82A-1206.

31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal. (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

(i) Sound and active physical and mental condition.
(ii) Good moral character.
(iii) Resident of Montana for at least one (1) year immediately prior to appointment.
(iv) Pass a satisfactory test in the operation of automobiles.
(v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

(j) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman

be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

31-105.1. Salaries paid out of earmarked revenue fund. All salaries of members of the highway patrol shall be paid out of the earmarked revenue fund of the highway department.

History: En. Sec. 1, Ch. 285, L. 1971.

Title of Act

An act to provide that all salaries of members of the highway patrol be paid out of funds of the highway department.

31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnaping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection

with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965.

Amendment

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Cross-References

Authority of members of Montana university system security department to issue traffic citations, sec. 75-8514.

Highway patrol functions transferred to division of motor vehicles, sec. 82A-1206.

31-114. Highway patrol—fees—fines and forfeitures. All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except for that portion of the fines, as provided in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969.

Compiler's Notes

Section 75-5304, referred to in this section, was repealed by sec. 12, Ch. 214, Laws 1969. For similar provisions in current law, see sec. 75-7902.

Amendments

The 1965 amendment inserted "except the penalty assessments levied and paid as provided for in section 4 of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund" after "general fund of the state."

The 1969 amendment substituted "except for that portion of the fines, as pro-

vided in section 4 of this act" for "except the penalty assessments levied and paid or provided for in section 4 of this act."

31-117. Drivers' examination section of highway patrol. There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and deputy chief examiner, as many assistant chief examiners and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, deputy chief examiner, assistant chief examiners and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the deputy chief examiner as a lieutenant, the assistant chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969.

Amendments

The 1969 amendment provided for the selection of a "deputy chief examiner" by the board.

Cross-References

Highway patrol board functions transferred to division of motor vehicles, sec. 82A-1205 (2).

31-119. Vehicle—motor vehicle—farm tractor—school bus—bus—motorcycle. (a). * * * [Same as parent volume.]

(b) Motor vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, excluding motorcycles.

(c) and (d). * * * [Same as parent volume.]

(e) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973.

Amendments

The 1973 amendment added "excluding motorcycles" to the end of subsection (b); and added subsections (e) and (f).

31-123. Chief—board. (a) Chief. The chief of the Montana highway patrol.

(b) * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in subsection (a).

Cross-References

Functions of highway patrol board and chief transferred to division of motor vehicles, secs. 82A-1205 (2), 82A-1206.

31-126. What persons are exempt from license. The following persons are exempt from license hereunder:

1 to 3. * * * [Same as parent volume.]

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state;

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969.

Amendments

The 1969 amendment, in subdivision (4), deleted a requirement that a nonresident be licensed as a chauffeur in Montana before accepting employment as a chauffeur for a Montana resident.

31-127. What persons shall not be licensed. The division of motor vehicles shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The division may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the division and the superintendent of public instruction.

(b) The division may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of eighteen (18) years;

3. To any person, as an operator or chauffeur, whose license has been suspended during the suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4 and 5. * * * [Same as parent volume.]

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless the person shall have successfully passed such examination;

7. * * * [Same as parent volume.]

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the division may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder

characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician.

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 178. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment changed the format of subsection (1); increased the age set out in the preliminary paragraph of subsection (1) from fifteen to sixteen; and inserted paragraph (1) (a).

Chapter 94, Laws of 1973, reduced the age specified at the end of subdivision 2 from twenty-one to eighteen years.

Chapter 178, Laws of 1973, substituted "division of motor vehicles" and "division" for "board" throughout the section; inserted "through a written report from his attending physician" following "when the afflicted person can show" in subdivision 8; substituted "a sufficient period and that the condition is stabilized as attested to by said physician" for "a period of two (2) years and when recommended by the state health officer as being controlled medically or otherwise to the degree that the affliction will not interfere with the safe operation of a motor vehicle" at the end of subdivision 8; and made minor changes in style and phraseology.

Cross-Reference

Driver education courses, secs. 75-7901 to 75-7907.

31-128. Classification of chauffeurs—special restrictions. (a). * * * [Same as parent volume.]

(b) No person who is under the age of eighteen (18) years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The board shall not issue a chauffeur's license for either such purpose unless the applicant has had at least one (1) year of driving experience prior thereto and the board is fully satisfied as to the applicant's competency and fitness to be employed.

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973.

Amendments

The 1969 amendment, in subsection (b), deleted a requirement that three people certify an applicant's good character.

The 1973 amendment reduced the age specified near the beginning of subsection (b) from twenty-one to eighteen years.

31-129. Instruction and traffic education permits and temporary licenses. (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. In addition, the board may issue such an instruction permit to any person who is at least fourteen and one-half (14½) years of age and who is successfully participating in a traffic education course approved by the Montana highway patrol and the superintendent of public in-

struction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(b) The board upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the board even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate a motor vehicle only on a designated highway or within a designated area but only when an approved instructor is occupying a seat beside the permittee.

(c). * * * [Same as parent volume.]

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973.

Amendments

The 1969 amendment, in subsection (a), substituted "satisfying the age requirement specified in 31-127 (1)" for "who is at least fifteen (15) years of age" and deleted an exception authorizing the holder of an instruction permit to operate a motorcycle.

The 1973 amendment added the third and fourth sentences to subsection (a); substituted "traffic education" for "restricted instruction" in subsection (b); and deleted "instruction" before "permit" near the beginning of the second sentence in subsection (b).

31-130. Application for license, instruction permit or motorcycle endorsement. (a) Every application for an instruction permit, operator's or chauffeur's license or motorcycle endorsement shall be made upon a form furnished by the board. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of six (6) months from the date of application.

(b). * * * [Same as parent volume.]

(c) Whenever application is received from an applicant previously licensed by any other jurisdiction or jurisdictions, the board shall request a copy of such applicant's driving record from such previous licensing jurisdiction or jurisdictions. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969.

Amendments

The 1969 amendment inserted provisions for applications for "motorcycle endorsement" in subsection (a) and added subsection (c).

31-131. Application of minors.

References

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof. (a) The highway patrol board shall have authority to

appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of the fees specified in this act, (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, and such licenses shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be deemed to have applied for renewal of a Montana operator's or chauffeur's license if such application is made within three (3) months of the expiration of such license.

(c) Licenses issued shall expire on the anniversary of the date of birth of the licensee four (4) years or less after the date of issue. Notwithstanding the foregoing provisions, the highway patrol board shall stagger initial license terms for the purpose of equalizing annual issuance of licenses and shall collect license fees proportionate to the term of such licenses.

(d) Whenever the board issues an original license to a person under the age of eighteen (18) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(e) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

(f) Driver license fees. Fees for driver license shall be as follows:

1. Driver's license—two dollars ($2) per year or fraction thereof.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 288 and once by Ch. 423. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1963 amendment completely re-

wrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

The 1967 amendment inserted "(of which sum * * * county general fund)" in the second sentence of subsection (a); and made minor changes in subsections (a) and (b).

Chapter 288, Laws of 1971, substituted "the fees specified in this act" for "four dollars ($4)" in the second sentence of subsection (a); deleted language providing for biennial expiration of licenses after "as applied for" in the second sentence of subsection (a); inserted "and such licenses" before "shall contain a photograph" in the second sentence of subsection (a); substituted the second sentence of subsection (b) for "This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five (5) year period"; inserted subsection (c); redesignated former subsections (c) and (d) as subsections (d) and (e); and added subsection (f).

Chapter 423, Laws of 1971, reduced the age specified in the first sentence of the present subsection (d) from 21 to 18 years.

Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar ($1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to $1.00.

31-142. Authority of board to cancel licenses. (a) The board is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127, or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(b). * * * [Same as parent volume.]

History: En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973.

Amendments

The 1973 amendment inserted "or that since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127" in subsection (a).

31-145. When court to forward license to board and report convictions. (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the board, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within five (5) days, forward said license to the

board and at the same time forward a record of such conviction to the board, providing that if such person does not possess a driver's license the court shall so indicate in its report to the board.

(b) Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward, within five (5) days, to the board a record of the conviction or forfeiture of bail, not vacated, of any person in said court for a violation of any said laws other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973.

Amendments

The 1973 amendment inserted "within five (5) days" in the second sentence of subsection (a) and in subsection (b).

31-146. Mandatory revocation of license by board or chief upon proper authority. The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. * * * [Same as parent volume.]

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof;

3 to 6. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in the first paragraph and inserted "or willfully * * * motor vehicle" in subdivision (2).

31-147. Authority of board to suspend license or driving privilege or issue probationary license. (a) The board is hereby authorized to suspend the license or driving privilege of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

3. Is an habitually reckless or negligent driver of a motor vehicle;

4. Is incompetent to drive a motor vehicle;

5. Has permitted an unlawful or fraudulent use of such license as specified in section 31-153;

6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

7. Has falsified his date of birth on his application for a driver's license.

(b). * * * [Same as parent volume.]

(c) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the board shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the board and the licensee agree that such hearing may be held in some other county. Upon such hearing the chief or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the board shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce or extend the period of probation or suspension of such license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969.

Amendments

The 1969 amendment deleted former subdivision (a)(1) authorizing suspension for "offense for which mandatory revocation of license is required upon conviction," designated former subdivisions (a)(2) to (a)(8) as (a)(1) to (a)(7), added "as specified in section 31-153" to subdivision (a)(5), and substituted "chief" for "supervisor" in subsection (c).

Suspension of License Not Punishment

The purpose and nature of the suspension of a driver's license is for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law, so that highway patrol board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. In re France, 147 M 283, 411 P 2d 732.

31-149. Period of suspension or revocation. (a) The board shall not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, 53-424 and 53-430, R. C. M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the board shall not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which

renders him incapable of safely driving a motor vehicle or a combination thereof, the board shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend or revoke the license or driving privilege of such person for a period of sixty (60) days. Upon receiving a report of a conviction or forfeiture of bail or collateral for a subsequent such offense, within five (5) years thereof, the board shall suspend or revoke the license or driving privilege of such person for a period of one (1) year.

(c) The revocation period for all revocations made mandatory by section 31-146, R. C. M. 1947, shall be one (1) year, except as provided in subsection (b) of this section.

History: En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969.

Amendments

The 1969 amendment inserted "or knowingly * * * a motor vehicle" after "narcotic drug" in subsection (b) and added subsection (c).

References

In re France, 147 M 283, 411 P 2d 732.

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the

licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3) and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

Repealing Clause
Section 7 of Ch. 154, Laws 1963 repealed all acts or parts of acts in conflict therewith.

31-170. Authority of board to issue identification cards. The Montana highway patrol board is hereby authorized to issue identification cards to any person over the age of eighteen (18) years not the holder of a valid driver's license.

History: En. Sec. 1, Ch. 53, L. 1971.

Title of Act
An act to authorize the highway patrol board to issue identification cards to persons over eighteen (18) years of age.

31-171. Rules and regulations for identification cards. The highway patrol board shall formulate reasonable rules and regulations for the application, issuing identification cards and cancellation thereof, and require the furnishing of such information necessary for the purpose of this act.

History: En. Sec. 2, Ch. 53, L. 1971.

31-172. Immunity of public entities for inaccurate identification cards. No public entity shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards provided for in this article.

History: En. Sec. 3, Ch. 53, L. 1971.

Cross-References

Procurement or production of false identification cards a misdemeanor, sec. 94-2014.

31-173. Agents for issuance of identification cards. The highway patrol board shall have authority to appoint county treasurer and other qualified officers to act as its agent for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971.

31-174. Fees for identification cards. Fees not in excess of one dollar ($1) for such identification cards shall be collected and credited to a revolving fund which shall be known as the Montana Highway Patrol Identification Card Fund. Such fund shall be used by the Montana highway patrol to defray the cost of issuing identification cards.

History: En. Sec. 5, Ch. 53, L. 1971.

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

Section 31-201. Definitions.
31-205. Payments into the Montana highway patrolmen's retirement account —investment.
31-206. Rules and regulations—actuarial data.
31-209. Payments by contributors.
31-210. Contributions by the state of Montana.
31-222. Nomination of beneficiary.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "'Fund,' the Montana highway patrolmen's retirement fund."

31-203. Montana highway patrolmen's retirement board.

Cross-References

Board abolished and functions transferred, sec. 82A-202(4).

Quasi-judicial functions transferred, sec. 82A-211.

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement account in the agency fund. Whenever there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars ($25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the account less than twenty-five thousand dollars ($25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency fund" for references to the "Montana highway patrolmen's retirement fund."

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(c).

31-206. **Rules and regulations—actuarial data.** The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund" in the last sentence.

31-209. **Payments by contributors.** Every member shall be required to contribute into the account a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the account shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

31-210. **Contributions by the state of Montana.** The state of Montana shall annually contribute to the account fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund."

31-214. **Disability retirement allowance.**

Evidence of Disability

State highway patrolman was not entitled to disability retirement allowance for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming and bowling and evidence of four medical doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally and permanently disabled in so far as being highway patrolman. State ex rel. Spear v. State Highway Patrol Retirement Board, 149 M 7, 422 P 2d 348.

31-222. **Nomination of beneficiary.** Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967.

Amendments

The 1967 amendment deleted "up until, but not after, the time of retirement" after "with the board" at the end of this section.

Effective Date

Section 2 of Ch. 107, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

Chapter 2. Road taxes and bonds, Repealed—Section 12-109, Chapter 197, Laws of 1965.
3. Supervision of public highways, 32-317 to 32-321.
6. Special road districts, abolishment, Repealed—Section 12-109, Chapter 197, Laws of 1965.
9. Corrugated iron culverts, Repealed—Section 12-109, Chapter 197, Laws of 1965.
10. Obstructions and encroachments, 32-1021, 32-1022.
11. Speed and traffic regulations, 32-1122, 32-1123, 32-1126, 32-1127, 32-1131.
12. Uniform Accident Reporting Act, 32-1208, 32-1213.
13. Good roads day, Repealed—Section 12-109, Chapter 197, Laws of 1965.
16. State highway commission and highway engineer—powers and duties, 32-1619, 32-1627, 32-1628, 32-1632 to 32-1641.
18. Stock lane law, Repealed—Section 12-109, Chapter 197, Laws of 1965.
19. Montana toll bridge authority, Repealed—Section 12-109, Chapter 197, Laws of 1965.
20. Controlled access highways, Repealed—Section 12-109, Chapter 197, Laws of 1965.
21. Uniform act regulating traffic on highways, 32-2124.3 to 32-2124.5, 32-2134.1 to 32-2134.3, 32-2137, 32-2142 to 32-2142.3, 32-2143.1 to 32-2144, 32-2146 to 32-2148, 32-2170, 32-2173, 32-2174, 32-2177, 32-2197, 32-2198, 32-21-105, 32-21-105.1, 32-21-130, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-149, 32-21-149.1, 32-21-150.1 to 32-21-150.3, 32-21-155.1, 32-21-163, 32-21-164, 32-21-166 to 32-21-175.
22. Highway code—general provisions, 32-2201 to 32-2203.
23. Classification of highways, 32-2301, 32-2302.
24. Assent to federal aid—state highway commission, powers and duties, 32-2401 to 32-2427.
25. State highway engineer and other employees, 32-2501 to 32-2503.
26. Distribution and apportionment of highway construction funds, 32-2601, 32-2603 to 32-2612.
27. Montana toll bridge authority, 32-2701 to 32-2716.
28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2803, 32-2805 to 32-2815.
29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
30. County road superintendent, 32-3001 to 32-3007.
31. Local improvement districts, 32-3101 to 32-3131.
32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301 to 32-3310, 32-3312 to 32-3317.
34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3406.
35. Bond issues for state toll bridges, 32-3501 to 32-3509.
36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
37. Local use of registration and other vehicle fees, 32-3701 to 32-3707.
38. County road and bridge bonds, 32-3801 to 32-3806.
39. Acquisition and disposition of property by state, 32-3901 to 32-3931.
40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
41. Contracts of state highway commission, 32-4101 to 32-4103.
42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
43. Control of access, 32-4301 to 32-4303, 32-4305 to 32-4311.
44. Good roads day—obstructions, encroachments and debris on highways, 32-4401 to 32-4410.
45. Junkyards along roads, 32-4513 to 32-4523.
46. Traffic safety program, 32-4601 to 32-4607.
47. Outdoor advertising along highways, 32-4715 to 32-4728.
48. Excavations in public streets, 32-4801 to 32-4808.

CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

32-102 to 32-107. (1611 to 1616) Repealed.

Repeal

These sections (Sec. 10, p. 106, L. 1874; Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913; Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959), relating to definitions and classifications of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-201 to 32-208. (1617 to 1620) Repealed.

Repeal

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch. 172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

Section 32-317. Designation of emergency area near construction project.
32-318. Notice of designation of emergency area—removal of designation.
32-319. Livestock not to run at large in emergency area.
32-320. Impounding of animals at large—notice to owner—fees and mileage.
32-321. Penalty for violations.

32-302 to 32-314. (1622 to 1632) Repealed.

Repeal

These sections (Sec. 12, p. 119, L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1805, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, 2740, 2741, Pol. C. 1895; Secs. 10, 33 to 36, 51, 52, Ch. 44, L. 1903; Secs. 1, 2, Ch. 76, L. 1905; Secs. 2 to 13, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 13, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 106, L. 1917; Secs. 2 to 12, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 4, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925; Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 176, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 84, L. 1953; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 116, L. 1957; Sec. 1, Ch. 128, L. 1959; Sec. 2, Ch. 260, L. 1965), relating to the functions of the county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2801 to 32-3007.

32-316. (1634) Repealed.

Repeal

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13, Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

32-317. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963.

Title of Act

An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emergency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date.

32-318. Notice of designation of emergency area—removal of designation. Notice of such designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963.

32-319. Livestock not to run at large in emergency area. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963.

32-320. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963.

32-321. Penalty for violations. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars ($10.00) or more than fifty dollars ($50.00) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963.

Effective Date

Section 6 of Ch. 118, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

32-401 to 32-413. (1635 to 1647) Repealed.

Repeal

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172, L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

32-415, 32-416. (1649, 1650) Repealed.

Repeal

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172, L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

32-501 to 32-507. (1676 to 1682) Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assessment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

32-509 to 32-526. (1684 to 1701) Repealed.

Repeal

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-601, 32-602. Repealed.

Repeal

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—PUBLIC BRIDGES

32-701 to 32-711. (1703 to 1713) Repealed.

Repeal

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 6, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1, Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951; Sec. 1, Ch. 172, L. 1963), relating to the construction and maintenance of public bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

32-713 to 32-715. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

32-716. Deduction of allotment from future regular apportionments, etc.

Compiler's Notes

Section 84-1817, referred to in this section in the parent volume, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-901 to 32-905. (1721 to 1725) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron culverts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways.
32-1022. Violations.

32-1002 to 32-1017. (1727 to 1741.1) Repealed.

Repeal

These sections (Sec. 2734, Pol. C. 1895; Secs. 50, 90, Ch. 44, L. 1903; Secs. 14 to 16, Ch. 6, Ch. 72, L. 1913; Secs. 2 to 16, Ch. 6, Ch. 141, L. 1915; Sec. 1, Ch. 74, L. 1929; Sec. 1, Ch. 237, L. 1959; Sec. 1, Ch. 176, L. 1965), relating to encroachments and obstructions on highways, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-21-111, 32-4402 to 32-4410.

32-1018. Grazing livestock on highway unlawful.

Civil Liability for Violation

Motorist injured when car struck cattle on public highway could not prove violation of statute and obtain judgment in his favor in absence of evidence that owner had willfully permitted livestock to be on highway and in absence of evidence that highway device had been installed to exclude livestock. Jenkins v. Valley Garden Ranch, Inc., 151 M 463, 443 P 2d 753.

Where no road other than a county road was involved, it was not necessary to prove violation of this section in order for a landowner to recover from the owner of a stray mule for personal injuries sustained while trying to remove the mule. Ekwortzel v. Parker, 156 M 477, 482 P 2d 559.

32-1020. Penalty for violating act.

Negligence Not Presumed

Fact that vehicle collided with animal in open range area does not alter rule that there is no presumption of negligence upon the part of a driver whose vehicle collides with livestock. Fries v. Shaughnessy, — M —, 496 P 2d 1159.

32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways. Any person who owns, controls or is entitled to possession of any livestock shall not herd or drive a herd of livestock in excess of the number of ten (10) on any interstate or state primary highways as defined by the state highway commission in the state unless the livestock shall be preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock shall not be herded or driven on any interstate or state primary highways during nighttime as defined in section 90-406, R.C.M. 1947, except in a case of emergency. During the hours of darkness the flagmen escorts will use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This provision shall not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967.

Title of Act

An act requiring flagmen escorts preceding and following livestock herded on interstate or state primary highways and prohibiting herding livestock on said highways during nighttime; and providing exceptions.

32-1022. **Violations.** Any person violating the terms of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1122. Regulation of size and weight of vehicles on public highways.
32-1123. Standards of maximum dimensions, weights, etc.
32-1126. Officers may weigh vehicles and require removal of excessive loads —badges and uniforms of highway employees.
32-1127. Permits for excess size and weight.
32-1131. Speed and traffic regulations—disposition of fines.

32-1112. (1748) Liability of owner for negligence of driver.

Gross Negligence

Despite record supporting conclusion that consumption of alcohol and its effect on driver's ability caused accident, question of driver's gross negligence was proper jury determination and precluded judgment for guest on directed verdict or notwithstanding the verdict. Hoffman v. Herzog, 158 M 296, 491 P 2d 713.

32-1113. (1748.1) Owner or operator of vehicle released, etc.

Intoxicated Driver

Question was for jury whether passenger injured in accident had assumed risk of going into car driven by man who had had several drinks or whether driver was grossly negligent; passenger has burden of showing that driver was grossly negligent which is defined as "failure to use slight care." Heen v. Tiddy, 151 M 265, 442 P 2d 434.

Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warnings from the plaintiff guest and another passenger to slow down. Carter v. Miller, 140 M 426, 372 P 2d 421, 425.

The question of whether the action of a second defendant is an independent intervening cause in one for the jury and their finding will not be disturbed when there is substantial evidence to support it. Holland v. Konds, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. Carter v. Miller, 140 M 426, 372 P 2d 421, 424.

32-1114. (1748.2) Assumption of risk by guest in motor vehicle, when.

Passenger for Hire

Where a driver acting within the scope of his employment is carrying a passenger in a motor vehicle for the direct benefit of the driver's employer, such passenger is not a "guest passenger" who assumes the ordinary negligence of the driver, but a passenger for hire to whom this section does not apply. Kaplan v. Hauf, 158 M 359, 492 P 2d 213.

32-1115. (1748.3) Imputation of ordinary negligence to guest.

References

Holland v. Konda, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

32-1122. (1751.1) **Regulation of size and weight of vehicles on public highways.** It shall be unlawful and constitute a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any public highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this act, or any vehicle or vehicles which are not so constructed or equipped as

required in this act or the rules and regulations of the state highway commission, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations or substitute any other limitations or requirements except as express authority may be granted in this act. Provided, however, that the operator of a vehicle which has been loaded at a location where no scale exists can move said vehicle over the public highways to the first open state scale without incurring the penalties provided by section 32-1125, R. C. M. 1947. The origin of movement must be at such distance from a scale that the operator could not have been reasonably expected to check the weight of said vehicle during the loading thereof and the operator must exhibit shipping papers or other written evidence of the location at which the vehicle was loaded. The vehicle must proceed toward its destination over the most direct highway route and stop at the first open state scale, permanent or portable. The load must be adjusted or reduced to conform to existing limitations upon size and weight of vehicles before said vehicle shall be moved from the point of weighing.

History: En. Sec. 1, Ch. 171, L. 1931; amd. Sec. 1, Ch. 123, L. 1947; amd. Sec. 1, Ch. 188, L. 1969.

Cross-References

Highway commission functions transferred, sec. 82A-703.

Amendments

The 1969 amendment added the proviso.

32-1123. Standards of maximum dimensions, weights, etc. The following standards are hereby made applicable to and shall govern the maximum dimensions and weights of motor vehicles, and other characteristics and factors thereof, operating over the highways of and in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Definitions. For the purpose of this act, the following definitions shall apply:

(a) Vehicle—as defined in section 32-2102, R.C.M. 1947.

(b) Motor Vehicle—as defined in section 32-2102, R.C.M. 1947.

(c) Truck-Tractor—as defined in section 32-2103, R.C.M. 1947.

(d) Truck—as defined in section 32-2104, R.C.M. 1947.

(e) Trailer—as defined in section 32-2105, R.C.M. 1947.

(f) Semitrailer—as defined in section 32-2105, R.C.M. 1947.

(g) Dolly or converter gear—a device consisting of one (1) or two (2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a full trailer as defined in section 32-2105, R.C.M. 1947.

(2) Width—No vehicle, unladen or with load, shall have a total outside width in excess of one hundred two (102) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not

more than one hundred (100) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded by a flagman escort for the purpose of warning other highway users, provided, however, that this restriction does not apply to dual wheel tractors under fifteen (15) feet over-all width which are used in farming operations. The rear of such an implement of husbandry shall properly display lights which meet standard requirements in section 32-21-134, R. C. M. 1947. However, if the highway passes through a hazardous area, such implements of husbandry must be preceded and followed by flagman escorts.

(3) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(4) Length—(a) No single truck, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear units of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one (1) motor vehicle and no motor vehicle shall draw more than two (2) motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one (1) vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(e) No passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" shall tow more than one (1) trailer or semitrailer, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) (i) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(ii) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(c) The state highway commission may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars ($10), specifying highway routings, the operation of vehicles having two (2) but not more than nine (9) axles for which the maximum single axle load shall be twenty thousand (20,000) pounds and all axles forty (40) inches or less apart shall be considered a single axle, and for which no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart shall carry a load in excess of thirty-four thousand (34,000) pounds. The maximum gross weight allowed on any vehicle or combination so authorized shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet and N equals number of axles, provided that the maximum allowable gross weight on any group of axles shall not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This subdivision shall have no application to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of title 23, United States Code) when such application would prevent this state from receiving any federal funds for highway purposes.

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half (½) foot, the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b)(i) and (b)(ii) of clause (5) above are subject to reasonable reduction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other causes.

(f). * * * [Same as (4)(f) in parent volume.]

(g) Nothing contained in this act shall be deemed to authorize, without a permit issued as provided by law, the operation of any combination of vehicles having any gross weight, axle load or size in excess of that authorized in this section, or the operation of any combination of vehicles on the national system of interstate and defense highways

having any gross weight or size in excess of that permitted by operation of law in this state prior to July 1, 1956, or by federal law or regulation in excess thereof, which may be hereafter adopted. If federal law allows establishment of size and weight limits in excess of those permitted in this section, without penalty or denial of federal funds for highway purposes, the state highway commission may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in this section, but within the limits necessary to qualify for federal aid highway funds.

History: En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953; amd. Sec. 1, Ch. 250, L. 1955; amd. Sec. 1, Ch. 221, L. 1959; amd. Sec. 1, Ch. 243, L. 1961; amd. Sec. 1, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 462, L. 1973.

Amendments

The 1967 amendment added new subdivision (1); redesignated old subdivisions (1) through (4) as new subdivisions (2) through (5); substituted new subdivision (4)(c) for old subdivision (3)(c), which read, "No combinations of (1) truck-tractor and semitrailer, (2) truck and trailer, or other combination of vehicles, shall consist of more than two units except that, at the discretion of the state highway commission, they may permit combinations of vehicles of not more than three units consisting of (3) tractor-semitrailer-semitrailer converted to full trailer by use of a dolly equipped with fifth wheel which shall be considered a part of the trailer for all purposes and not as a separate unit, or (4) tractor-semitrailer-full trailer, and no such combination of vehicles, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear unit of such combination shall be equipped with breakaway brakes"; redesignated the first paragraph of subdivision (5)(b) as (i); redesignated old subdivision (4)(c) as new subdivision (5)(b)(ii); added new subdivision (5)(c); in new subdivision (5)(e), substituted "(b)(i) and (b)(ii) of clause (5)" for "(b) and (c) of clause (4)" before "above are subject"; and added new subdivision (5)(g).

The 1973 amendment increased the permissible outside width for all vehicles except buses in subsection (2) from 96 to 102 inches; increased the distance over which implements of husbandry may be moved from 50 to 100 miles in the middle of subsection (2); deleted "and followed" following "it shall be preceded" in the second proviso to subsection (2); added the third proviso and the two final sentences to subsection (2); and made a minor change in style.

Cross-References

Highway patrol functions transferred, sec. 82A-1206.

Mandatory Nature of Penalty

Once court determined that defendant was driving logging truck upon highways of state when gross weight exceeded maximum gross weight allowed by statute by some 28,000 pounds, court had no choice but to levy additional fine of $1,000 under penalty section of chapter; penalty is in addition to the other penalties provided by statute, is obligatory upon judge, is not violation of double jeopardy provision of constitution and does not violate statute providing that when action is punishable under different provisions of code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, Eleventh Judicial Dist., 151 M 12, 438 P 2d 560.

32-1126. (1751.5) **Officers may weigh vehicles and require removal of excessive loads—badges and uniforms of highway employees.** Any peace officer, officer of the Montana highway patrol, or employees of the state highway commission are authorized and empowered to weigh any vehicle as provided in section 32-1123, R. C. M. 1947, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales in the event such scales are within two (2) miles. The peace officer, officer of the Montana highway patrol, or employees of the state highway commission may then require the driver to unload immediately such portion of the load as may be necessary to

decrease the weight of such vehicle to conform to the maximum allowable weights specified in section 32-1123.

All commodities and material so unloaded as required by this section shall be cared for and removed from the highway right of way by the owner or operator of such vehicle at the risk of such owner or operator. Such removal shall be within such reasonable time as may be designated by the peace officer, officer of the highway patrol, or employees of the Montana state highway commission who has compelled such unloading.

The state highway commission is empowered to establish, maintain, and operate, either intermittently or on a continuous schedule, weigh stations and be empowered to require all vehicles, except passenger cars, and pickup trucks under eight thousand (8,000) pounds G.V.W. to enter for the purpose of weighing and inspection for compliance with all laws pertaining to the operation and safety requirements.

Employees of the state highway commission engaged in the enforcement of this act shall wear and prominently display an identification badge or device with the employee's name and title shown thereon. The state highway commission may in its discretion authorize uniform dress for state highway commission employees engaged in the enforcement of this act.

History: En. Sec. 5, Ch. 171, L. 1931; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971.

Amendments

The 1971 amendment deleted "having reason to believe that the weight of a vehicle and load is unlawful" after "highway commission" near the beginning of the section; substituted "any vehicle as provided in section 32-1123, R. C. M. 1947" for "the same" near the middle of the first paragraph; and inserted the present third paragraph.

32-1127. (1751.6) Permits for excess size and weight. The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object or any other thing of a size or weight exceeding the maximum specified in section 32-1123, R. C. M. 1947, or acts amendatory upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; provided, however, that only the state highway commission shall have the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in section 32-1123, R. C. M. 1947. Said permit shall be issued in the public interest; provided, however, that any carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of time greater than the license provided in Title 53 or Title 32, R. C. M. 1947, as amended, including grace periods allowed by said sections. Vehicles licensed in other jurisdictions may, at the discretion of the Montana state highway commission, purchase permits to expire with their registration, provided that any license required by the state of Montana shall govern the issuance of a special permit. The Mon-

tana state highway commission may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in paragraph (b). Such permits issued to dealers in implements of husbandry and self-propelled machinery shall expire on December 31 of each year with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery shall be a resident of the state of Montana. A post-office box number shall not be a permanent address under this section.

The applicant for any special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or any other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or any other thing is to be moved and whether such permit is required for a single trip or for continuous operation. All fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) Special permits—discretion of issuer—conditions. The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or any other thing described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle, combination of vehicles, load, object, or any other thing when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) Special Permits—Fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the state highway commission:

Six dollars ($6) for each permit issued in excess of the size and weight specified in section 32-1123, R. C. M. 1947, and acts amendatory thereto; provided, however, that term or blanket permits shall not be issued for overwidth vehicles, combination of vehicles, load or any other thing in excess of fifteen (15) feet, overlength vehicles, combination of vehicles, load, object or any other thing in excess of eighty-five (85) feet, and overheight vehicles, combination of vehicles, load or any other thing in excess of thirteen and one-half (13½) feet or of a limit determined by the state highway commission. A vehicle, combination of vehicles, load, or any other thing in excess of these dimensions will be limited to trip permits.

(c) A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to the provisions of this section except as follows:

1. The vehicle, loaded or unloaded, shall not exceed fifty-five (55) feet in length nor twenty (20) feet in width.

2. No single load shall be moved on such vehicle a distance greater than seventy-five (75) miles from the point of origin on public roads.

3. When the vehicle is hauling a load it shall be accompanied by two (2) pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written thereon. One (1) car shall precede the vehicle by not less than one hundred (100) yards nor more than one-quarter (¼) mile and one (1) shall follow the vehicle at a distance not less than one hundred (100) yards nor more than one-quarter (¼) mile. The following pilot car shall be in radio contact with the vehicle at all times.

4. The speed of the vehicle shall be reasonable and proper but not in excess of thirty-five (35) miles per hour.

5. The vehicle shall be operated only between the hours of sunrise and sunset.

6. The vehicle may not be operated on an interstate or controlled-access highway.

7. A term or blanket permit may be issued for the vehicle.

(d) A fee of six dollars ($6) shall be paid for each overweight permit issued, provided no permit shall be issued for a period of time greater than the license provided in Title 53 or Title 32, R. C. M. 1947, as amended, including grace periods allowed by said sections. Vehicles licensed in other jurisdictions may, at the discretion of the Montana state highway commission, purchase permits to expire with their registration, provided that any license required by the state of Montana shall govern the issuance of a special permit. In addition to the permit fee, there shall be charged for single trip permits: five dollars ($5) for distances to and including one hundred (100) miles; fifteen dollars ($15) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars ($25) for distances over two hundred (200) miles traveled, for such excess load over the gross allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(e) Permits issued to the United States government, states, counties, cities and their political subdivisions, shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

(f) Specal permits — misrepresentations and violations — penalty — display of permit. Any person who knowingly and willfully misrepresents the size of [or] weight of any vehicle, combination of vehicles, load, object or any other thing in obtaining a special permit or does not follow the requirements and conditions of the special permit or who operates any vehicle, combination of vehicles, load, object, or any other thing, the gross weight of which is in excess of the maximum for which such vehicle, combination of vehicles, load, object, or any other thing may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the state highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the state highway commission who shall find any person operating a vehicle, combination of vehicles, load, object, or any other thing in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

History: En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955; amd. Sec. 5, Ch. 243, L. 1961; amd. Sec. 1, Ch. 225, L. 1965; amd. Sec. 1, Ch. 83, L. 1969; amd. Sec. 1, Ch. 334, L. 1971.

Amendments

The 1965 amendment substituted "shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load" for "shall specifically describe the vehicle or vehicles and load" after "The applicant for any special permit" at the beginning of the second paragraph; and substituted "over which the vehicle or load is to be moved" for "for which to operate is requested" after "particular state highways" in the first sentence of the second paragraph.

The 1969 amendment substituted "time greater * * * said sections" for "more than nine (9) months" in the second sentence of the first paragraph and added the remaining sentences to that paragraph and, in subsection (b), increased special permit fees from $3.00 to $6.00 in the second paragraph, inserted "A fee of six dollars * * * special permit" in the third paragraph, and, immediately following, substituted "In addition to the permit fee" for "In addition to the three dollar ($3.00) fee specified herein for overweight permits."

The 1971 amendment inserted "combination of vehicles, load, object, or any other thing" wherever appearing throughout the section; substituted references to section 32-1123 for "this act" in three instances; inserted "or combination of vehicles" in the first proviso to the first sentence of the first paragraph; increased the maximum length specified in the proviso to the first sentence of the second paragraph of subdivision (b) from 70 to 85 feet; inserted "thirteen and one-half (13½) feet or of" in the proviso to the first sentence of the second paragraph of subdivision (b); inserted a new subdivision (c); redesignated the former third paragraph of subdivision (b) as subdivision (d); inserted a new subdivision (e); redesignated former subdivision (c) as subdivision (f); and made numerous changes in phraseology, style and punctuation.

Effective Date

Section 2 of Ch. 225, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-1131. (1752) **Speed and traffic regulations—disposition of fines.** Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except for that portion of the fines, as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969.

Compiler's Notes

Section 75-5304 was repealed by Sec. 12, Ch. 214, Laws 1969. For present provisions, see sec. 75-7901 et seq.

Amendments

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

The 1969 amendment substituted "for that portion of the fines" for "the penalty assessments levied and paid."

Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 214, Laws 1969 read "Sections 75-5301 through 75-5309, R. C. M. 1947, are repealed."

Effective Dates

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Section 13 of Ch. 214, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

32-1143 to 32-1145. Repealed.

Repeal

Sections 32-1143 to 32-1145 (Secs. 1 to 3, Ch. 7, L. 1941), relating to use of white canes by the blind, were repealed by Sec. 7, Ch. 181, Laws 1971. For similar provisions in current law, see secs. 71-1303 to 71-1308.

CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

Section 32-1208. Written reports of accidents, additional information, form of report.
32-1213. Accident reports confidential.

32-1201. Definitions.

Cross-References

Highway patrol board abolished and functions transferred, sec. 82A-1205 (2).

Highway patrol functions transferred, sec. 82A-1206.

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

32-1202. Accidents involving death or personal injuries.

References

Parini v. Lanch, 148 M 188, 418 P 2d 861, 864.

32-1208. Written reports of accidents, additional information, form of report. (a) The operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or injured or in which damage to the property of any one person in excess of two hundred and fifty dollars ($250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor.

(b) and (c) * * * [Same as parent volume.]

(d) Form of report. The form of accident report required under section 32-1208, shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this act.

History: En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971.

Amendments

The 1971 amendment revised and reworded subsection (a) to raise the minimum damage requiring a report from $100 to $250, and to apply the amount to damage sustained by any one person rather than to total damage; and substituted "exemptions" for "exceptions" at the end of subsection (d).

32-1213. Accident reports confidential. (a). * * * [Same as parent volume.]

(b) All accident reports and supplemental information filed as required by this act shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that the report and supplemental information filed by law enforcement personnel, as required by this act may be examined by any person named in such report or reports or by any driver, passenger or pedestrian involved in the accident or by his representative designated in writing, or if such person shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator.

(c). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973.

Amendments

The 1973 amendment substituted "filed as required by this act" near the beginning of subsection (b) for "filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility"; substituted "the report and supplemental information filed by law enforcement personnel, as required by this act" in subsection (b) for "such reports and supplemental information"; inserted "or by any driver, passenger or pedestrian involved in the accident" in the latter part of subsection (b); added "or if such person shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator" at the end of subsection (b); and made a minor change in phraseology.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confidential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. Morrison v. City of Butte, 150 M 106, 431 P 2d 79.

32-1215. Any incorporated city may require accident reports.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confidential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. Morrison v. City of Butte, 150 M 106, 431 P 2d 79.

CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1301. (1764) Repealed.

Repeal

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

Section 32-1619. Disposition of state highway moneys.
32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.
32-1628. Bypassing of municipalities—consent of municipal governing body.
32-1632. Appointment of employees as peace officers.
32-1633. Training of highway commission peace officers—rules and regulations.
32-1634. Training required before arrests authorized.
32-1635. Official attire required for making arrests and carrying firearms.
32-1636. Power to inspect vehicle registration, receipts and other documents.
32-1637. Identification badge and uniform.
32-1638. Definition of public highways.
32-1639. Offenses for which arrest authorized.
32-1640. Co-operation with other agencies.
32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace.

32-1601 to 32-1618. (1783 to 1798) Repealed.

Repeal

These sections (Secs. 1 to 16, Ch. 10, Ex. L. 1921; Sec. 1, Ch. 129, L. 1925; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 111, L. 1941; Secs. 1 to 6, Ch. 86, L. 1945; Sec. 1, Ch. 155, L. 1945; Sec. 1, Ch. 117, L. 1953; Sec. 1, Ch. 118, L. 1953; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 210, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch. 180, L. 1961; Sec. 1, Ch. 182, L. 1961; Sec. 1, Ch. 222, L. 1961; Sec. 1, Ch. 91, L. 1963; Secs. 1, 2, Ch. 143, L. 1963; Sec. 1, Ch. 125, L. 1965; Secs. 17, 18, Ch. 177, L. 1965), relating to the powers and the duties of the state highway commission and the highway engineer, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2401 to 32-2413, 32-2418, 32-2501 to 32-2503, 32-3902 to 32-3916, 32-4016, 32-4101 to 32-4103.

32-1619. (1799) Disposition of state highway moneys. All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund. All moneys received from the counties, and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the state highway commission. Hereafter all moneys collected for the state highway commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 17, Ch. 10, Ex. L. 1921; re-en. Sec. 1799, R. C. M. 1921; amd. Sec. 212, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

32-1620. (1800) Repealed.

Repeal

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2417.

32-1622 to 32-1626. Repealed.

Repeal

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957; Sec. 1, Ch. 204, L. 1961;

Sec. 1, Ch. 219, L. 1963), relating to state and federal aid highways were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2302, 32-2411 and 32-2414 to 32-2416.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs. (1) Except as provided in subsection (2) of this section, the state highway commission shall pay the entire costs of construction and maintenance of streets and highways which:

(a) Are state highway routes; and

(b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half (½) of the state's share of the cost of curbs and gutters along such streets and highways.

History: En. Sec. 1, Ch. 210, L. 1965.

Title of Act

An act relating to construction and maintenance of certain streets and highways in or near incorporated municipalities.

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-1628. Bypassing of municipalities—consent of municipal governing body. (1) The highway commission shall not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The highway commission shall notify the governing body of such municipality by certified mail that they propose to bypass the municipality. No contract shall be let nor work commenced until the governing body notifies the commission of its consent, or until the elapse of sixty (60) days after the notice has been sent by the highway commission to such municipality, whichever first occurs. The failure of such municipality to act and notify the highway commission of its action within such sixty (60) day period shall constitute implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the highway commission has been notified of such consent.

(5) Nothing contained in this act shall in any way modify the provisions of section 32-1625, R. C. M. 1947.

History: En. Sec. 2, Ch. 210, L. 1965.

Compiler's Notes

Section 32-1625, referred to in subsection (5) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Effective Date

Section 3 of Ch. 210, Laws, 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Retrospective Application

Statute would not be enforced in favor of nonconsenting municipality where state highway commission had acquired rights and obligations and begun construction of the bypass before its enactment and enactment did not disclose legislative intent to apply retroactively. City of Harlem v. State Highway Commission, 149 M 281, 425 P 2d 718.

32-1629, 32-1629.1 to 32-1631. Repealed.

Repeal

Sections 32-1629, 32-1629.1 to 32-1631 (Secs. 1 to 3, Ch. 128, L. 1965; Secs. 1, 2, Ch. 309, L. 1967) relating to littering on highway, were repealed by Sec. 12, Ch. 323, Laws 1971.

32-1632. Appointment of employees as peace officers. The state highway commission is hereby empowered to appoint employees as peace officers to carry out the provisions expressly set forth in this act. Such employees so selected shall include only the gross vehicle weight division supervisor, scale supervisor, and scalemen. Each employee so appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the commission.

History: En. Sec. 1, Ch. 242, L. 1971.

Title of Act

An act authorizing the highway commission to grant certain employees of the state highway commission the power of arrest in specified instances, providing for rules and regulations, establishing qualifications to accept bail, issue summons, file complaints, and providing for cooperation with other peace officers.

Cross-References

Arrest by a peace officer, sec. 95-608.
Definition of peace officer, sec. 95-210.
Highway commission functions transferred, sec. 82A-703.

32-1633. Training of highway commission peace officers—rules and regulations. The highway commission shall provide such training as required to qualify said employees to competently perform their duties under this act and shall establish such rules and regulations as are required and necessary for qualification of said employees as peace officers.

History: En. Sec. 2, Ch. 242, L. 1971.

32-1634. Training required before arrests authorized. No employee shall be authorized to make arrests until he has successfully completed such training as required by the highway commission.

History: En. Sec. 3, Ch. 242, L. 1971.

32-1635. Official attire required for making arrests and carrying firearms. Qualified employees shall have authority to make arrests throughout the state of Montana only when dressed in official uniform and displaying the official badge authorized by the highway commission. Authorized employees may not carry firearms unless officially attired.

History: En. Sec. 4, Ch. 242, L. 1971.

32-1636. Power to inspect vehicle registration, receipts and other documents. Employees of the state highway commission designated under this act shall be empowered when officially dressed to make reasonable inspection of vehicle registration receipts, state highway commission receipts and registrations, special permits, and such other documents as

may be required to be carried in or for a vehicle traveling on the public highways of Montana.

History: En. Sec. 5, Ch. 242, L. 1971.

32-1637. Identification badge and uniform. Employees of the state highway commission engaged in the enforcement of this act shall wear and prominently display an identification badge or device with the employee's name and title shown thereon. The state highway commission may in its discretion authorize uniform dress for state highway commission employees engaged in the enforcement of this act.

History: En. Sec. 6, Ch. 242, L. 1971.

32-1638. Definition of public highways. The term "public highways" are highways as defined in section 32-2114, R. C. M. 1947, amended.

History: En. Sec. 7, Ch. 242, L. 1971.

32-1639. Offenses for which arrest authorized. Authorized employees of the state highway commission shall have authority to make arrests for violations of the following statutory provisions only:

(1) Section 32-1122 through section 32-1130, R. C. M. 1947, amended.
(2) Section 32-3201 through section 32-3203, R. C. M. 1947, amended.
(3) Section 32-3301 through section 32-3316, R. C. M. 1947, amended.
(4) Section 32-3401 through section 32-3406, R. C. M. 1947, amended.
(5) Section 53-118.1 through section 53-118.4, R. C. M. 1947, amended.
(6) Section 53-119.1, R. C. M. 1947, amended.
(7) Section 84-1833, R. C. M. 1947, amended.
(8) Section 84-1841 through section 84-1844, R. C. M. 1947, amended.
(9) Section 84-6601 through section 84-6605, R. C. M. 1947, amended.

Said employees shall have no authority of arrest other than herein specified.

History: En. Sec. 8, Ch. 242, L. 1971.

Compiler's Notes

Sections 53-118.1 to 53-118.4, referred to in subdivision (5) of this section, were repealed by Sec. 6, Ch. 209, Laws of 1971. For similar provisions in current law, see sections 53-118.6 to 53-118.10.

32-1640. Co-operation with other agencies. The employees of the state highway commission shall co-operate with other law enforcement agencies.

History: En. Sec. 9, Ch. 242, L. 1971.

32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace. Authorized employees, upon making an arrest, shall deliver to the offender a form of summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace, the authorized employee has the right to accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the summons. In the event the authorized employee accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The authorized employee shall then deliver the bail money to the justice of the peace before whom the

offender is to appear, the justice of the peace shall give a receipt to the authorized employee for the amount of bail money delivered. After filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set, fix and accept further appearance bail bond.

For the purpose of this act only, the fees of justices of the peace in all offenses in which the statutory fine is five dollars ($5) or less, shall be one dollar ($1), but if the statutory fine is in excess of five dollars ($5), the justices of the peace shall be permitted the fee now prescribed by law; provided that no additional fees shall be paid justices of the peace where salaries are fixed by law.

History: En. Sec. 10, Ch. 242, L. 1971.

CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1801 to 32-1804. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-1901 to 32-1915. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 31, L. 1953; Sec. 11-117, Ch. 264, L. 1963), relating to toll bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2701 to 32-2716, 32-3501 to 32-3509, and 32-3919.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-2001 to 32-2010. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 104, L. 1955; Secs. 1 to 3, Ch. 121, L. 1957; Sec. 1, Ch. 134, L. 1959; Secs. 1 to 9, Ch. 156, L. 1963; Sec. 2, Ch. 90, L. 1965), relating to controlled access highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3920, 32-4018, and 32-4301 to 32-4311. Sec. 1, Ch. 90, L. 1965 which was inadvertently classified as section 32-2008.1 has been transferred to section 32-4308.1.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Section 32-2124.3. Forest development road, special service road defined.
32-2124.4. State laws applicable on forest development roads—enforcement.
32-2124.5. Special service roads not subject to state law enforcement.
32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty.
32-2134.2. Reward for information on injury to or removal of sign or marker.
32-2134.3. Posting of act along highways.
32-2137. Traffic-control signal legend.
32-2142. Persons under the influence of intoxicating liquor or of drugs.
32-2142.1. Chemical blood, breath, or urine tests.
32-2142.2. Right of appeal to court.
32-2142.3. Administration of tests.
32-2143.1. Permission of authorities to hold speed contest.

32-2143.2. Penalty for unauthorized drag racing.
32-2144. Speed restrictions—basic rule.
32-2146. When local authorities may and shall alter limits.
32-2147. Minimum speed regulations.
32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.
32-2170. Vehicle approaching or entering intersection.
32-2173. Vehicle entering highway from private road, driveway or public approach ramp.
32-2174. Vehicles approaching "Yield" sign.
32-2177. Pedestrians' right of way in crosswalk.
32-2197. Overtaking and passing school bus.
32-2198. Special lighting equipment on school buses.
32-21-105. Riding on motorcycles.
32-21-105.1. Headgear required for motorcycle riders—noise suppression devices.
32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass.
32-21-132. Audible and visual signals on vehicles.
32-21-143.1. Brake equipment required.
32-21-143.2. Performance ability of brakes.
32-21-143.3. Maintenance of brakes.
32-21-143.4. Hydraulic brake fluid.
32-21-149. Restrictions as to tire equipment.
32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty
32-21-150.1. Seat belts required in new vehicles.
32-21-150.2. Specifications for seat belts.
32-21-150.3. Penalty for seat belt violations.
32-21-155.1. Semiannual inspection of school buses.
32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
32-21-164. Summons—issuing to child under eighteen.
32-21-166. Vehicle equipment safety compact—text.
32-21-167. Legislative findings on equipment safety.
32-21-168. Equipment requirements continued in force.
32-21-169. State commissioner on vehicle equipment safety commission.
32-21-170. Retirement of equipment safety commission employees.
32-21-171. Governmental agencies to co-operate with equipment safety commission.
32-21-172. Documents filed and notices given by equipment safety commission.
32-21-173. Equipment safety commission budgets.
32-21-174. Equipment safety commission accounts.
32-21-175. Governor as executive head for compact purposes.

32-2110. Definitions—supervisor—board—commission.

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-2114. Street or highway—private road or driveway—roadway, etc.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2115. Intersection.

Nature of Roads Forming Intersection

An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2119. Official traffic-control devices, etc.

Detour Signs and Barricades

Detour signs and "zebra board" barricades are official traffic-control devices when erected by public authority in conformity with provisions of the Highway Code; their use to block off an unopened section of highway under construction negatives any implied consent to use of the section. Gilleard v. Draine, — M —, 496 P 2d 83.

32-2124.3. Forest development road, special service road defined. For the purpose of this act a "forest development road" is defined as a road located on national forest lands or on a right of way acquired by the United States and used for the protection, administration and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right of way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

History: En. Sec. 1, Ch. 139, L. 1971.

Title of Act

An act to make Montana traffic laws applicable to forest development roads except as additional or conflicting rules may be designated by the United States forest service for portions thereof designated as special service roads, and to confer law enforcement jurisdiction upon the Montana highway patrol and sheriffs of this state to enforce the traffic laws.

32-2124.4. State laws applicable on forest development roads—enforcement. Forest development roads in the state of Montana, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

History: En. Sec. 2, Ch. 139, L. 1971.

32-2124.5. Special service roads not subject to state law enforcement. When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

History: En. Sec. 3, Ch. 139, L. 1971.

32-2133. State highway commission to adopt sign manual.

Lack of Uniformity

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2156, which prohibits driving to the left of the center line 100 feet from intersection, it was not error on the judge's part to refuse to instruct jury on the latter section. Graveley v. Springer, 145 M 486, 402 P 2d 41.

Manual as Evidence

In action for wrongful death of driver of state highway truck killed while sanding road in snowstorm, it was error to admit into evidence Manual on Uniform Traffic Control Devices adopted by highway commission where manual required that appropriate signs be erected warning public of road work but did not specifically designate who was to erect them. Williams v. Maley, 150 M 261, 434 P 2d 398.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134. State highway commission to sign all state highways.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134.1. **Injury to or removal of sign or marker as misdemeanor—penalty.** Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars ($250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

History: En. Sec. 1, Ch. 184, L. 1965.

Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or marker erected on the right of way of any secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

32-2134.2. **Reward for information on injury to or removal of sign or marker.** Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars ($100).

History: En. Sec. 2, Ch. 184, L. 1965.

32-2134.3. **Posting of act along highways.** It is the duty of the state highway commission to post notices of this act, and the penalties provided for, at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 184, L. 1965.

Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2136. Obedience to and required traffic-control devices.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2137. **Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop,"

or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) to (d). * * * [Same as parent volume.]

(e) Red with Traffic Sign Legend—Right Turn on Red After Stop:

1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal and legend shall enter the roadway until the green or "Go" is shown alone.

(f) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; amd. Sec. 1, Ch. 211, L. 1963.

Amendment

The 1963 amendment inserted a new subsection (e) and redesignated former subsection (e) as (f).

32-2142. Persons under the influence of intoxicating liquor or of drugs. (a) * * * [Same as parent volume.]

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood it shall be presumed that the defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor:

4. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood:

5. * * * [Same as parent volume.]

(c) to (e) * * * [Same as parent volume.]

(f) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971.

Amendments

The 1971 amendment reduced the percentage of alcohol required for presumption of intoxication, as specified in subdivisions 2 and 3 of subsection (b), from .15 per cent to .10 per cent; substituted "grams of alcohol per one hundred (100) cubic centimeters of blood" at the end of subdivision 4 for "milligrams of alcohol per one hundred (100) milligrams of blood"; and made minor changes in punctuation.

Effective Date

Section 2 of Ch. 132, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

Double Jeopardy

Conviction under this section did not bar subsequent prosecution for involuntary manslaughter arising out of the same incident because proof of involuntary manslaughter requires proof of an additional fact. State v. McDonald, 158 M 307, 491 P 2d 711.

Improperly Conducted Test

Although it was improper to admit results of blood test showing that deceased's blood contained 0.15% alcohol by weight where testimony disclosed that tube used to collect blood sample had previously contained formalin and formaldehyde which could have resulted in higher than actual alcohol content result, error was not reversible in view of other testimony concerning deceased's state of intoxication. Benner v. B. F. Goodrich Co., 150 M 97, 430 P 2d 648.

Jurisdiction of Justice of Peace

Since the driving of a vehicle on a highway while under the influence of intoxicating liquor is a misdemeanor under this section, it falls within the jurisdiction of a justice of the peace under section 93-410. Wilson v. Brodie, 148 M 235, 419 P 2d 306, 308.

32-2142.1. Chemical blood, breath, or urine tests. (a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 32-2142, R. C. M., 1947, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The arresting officer may designate which one of the aforesaid tests shall be administered.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section.

(c) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in paragraph (a) of this section, none shall be given, but the Montana highway patrol board, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or

driving privilege of such person on the highways of this state for a period of sixty (60) days. Like refusal by a nonresident shall be subject to suspension by the board in like manner. All such suspensions are subject to review as hereinafter provided.

History: En. Sec. 1, Ch. 131, L. 1971.

Title of Act

An act to provide for an intoxication test and consent thereto, for persons arrested for driving while under the influence of intoxicating liquor, providing for suspension upon refusal of operator to submit to test, providing for an appeal of license suspension.

32-2142.2. Right of appeal to court. (a) Any person whose license or privilege to drive has been suspended, as hereinbefore authorized, the board shall immediately notify such person in writing and such person shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon thirty (30) days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, whether the person was placed under arrest and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

(b) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(c) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor.

(d) The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 131, L. 1971.

32-2142.3. Administration of tests. (a) Only a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(b) The person tested may, at his own expense, have a physician or registered nurse, of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of

determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(d) No physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(e) If the test given under the preceding section is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Montana highway patrol board in co-operation with the state board of health or any other appropriate agency, shall adopt uniform standards for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary.

History: En. Sec. 3, Ch. 131, L. 1971.

Separability Clause

Section 4 of Ch. 131, Laws 1971 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 5 of Ch. 131, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Cross-References

State department of health abolished and functions transferred, sec. 82A-602 (1).

32-2143.1. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967.

Title of Act

An act prohibiting speed contests and "drag racing" on the public highways or streets unless written permission is granted by the authorities having jurisdiction over such highways or streets; fixing penalty for violation of act.

32-2143.2. Penalty for unauthorized drag racing. Any person convicted for violation of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500) or by imprisonment in the county or city jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967.

32-2144. Speed restrictions—basic rule. (a). * * * [Same as parent volume.]

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

1. Twenty-five (25) miles per hour in any urban district;

2. Thirty-five (35) miles per hour on any highways under construction or repairs;

3. Fifty-five (55) miles per hour in such other locations during the nighttime; except that the nighttime speed limit on those completed sections of interstate highways shall be sixty-five (65) miles per hour, however, the Montana highway commission shall have the authority to establish reduced night speed limits on curves and other dangerous locations as set forth in section 32-2145, R.C.M. 1947.

Daytime means from a half (½) hour before sunrise to a half (½) hour after sunset. Nighttime means at any other hour.

The speed limits set forth in this section may be altered as authorized in sections 32-2145 and 32-2146.

(c). * * * [Same as parent volume.]

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967.

Amendments

The 1967 amendment added the exception concerning interstate highways at the end of the first paragraph of subdivision 3 of subsection (b).

Ordinary Negligence

This section refers to ordinary, prudent driving standards, and therefore is a standard for ordinary negligence and not gross negligence required for recovery by guest in action against driver. Hoffman v. Herzog, 158 M 296, 491 P 2d 713.

Snow Conditions

Mere showing of a collision killing a horse in open range country, an icy road condition and existence of uninterpreted skid marks failed to show violation of subdivision (a) of this section. Fries v. Shaughnessy, — M —, 496 P 2d 1159.

32-2146. When local authorities may and shall alter limits. (a) to (c) * * * [Same as parent volume.]

(d) Speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas shall be established by the highway commission which shall have exclusive jurisdiction on such highways as in compliance with section 32-2144, R. C. M. 1947.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971.

Amendments

The 1971 amendment substituted a new subsection (d) for a subsection reading "Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commission."

32-2147. Minimum speed regulations. (a) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four (4) or more vehicles are formed in line, shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having juris-

diction over the highway, or wherever sufficient area for a safe turnout exists, in order to permit the vehicles following it to proceed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place.

The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(b). * * * [Same as parent volume.]

History: En. Sec. 44, Ch. 263, L. 1955; amd. Sec. 1, Ch. 387, L. 1973.

Amendments

The 1973 amendment deleted from subsection (a) a second paragraph relating to police directions to slow drivers; and added the present second and third paragraphs to subsection (a).

Effective Date

Section 2 of Ch. 387, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 20, 1973.

Instructions

Where plaintiff's son was killed when car in which he was riding struck rear of defendant's truck which had just turned onto highway, it was reversible error for court to instruct jury on slow speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal speed. Hageman v. Townsend, 144 M 510, 398 P 2d 612.

Purpose

The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. Hageman v. Townsend, 144 M 510, 398 P 2d 612.

32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers. (a) No person shall operate any truck or truck-tractor the gross weight of which exceeds eight thousand (8,000) pounds at a speed greater than sixty-five (65) miles per hour on those completed sections of interstate and four-lane divided highways, and sixty (60) miles per hour on those completed sections of primary and secondary highways; provided, however, that truck nighttime speed limit shall not exceed that of automobiles as stated in section 32-2144, R. C. M. 1947.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, L. 1971.

Amendments

The 1971 amendment substituted "sixty-five (65) miles per hour * * * as stated in section 32-2144, R. C. M. 1947" for "fifty (50) miles per hour" at the end of subsection (a).

32-2151. Drive on right side of roadway—exceptions.

Application

Defendant's proposed instruction in automobile accident case placing duty upon plaintiff to drive on right side of roadway at all times and under all conditions, and which made plaintiff absolutely negligent as matter of law if she failed to do so, was not entirely correct statement of law and therefore properly refused since this section and section 32-2153 provide exceptions to rule that one must drive upon right side of roadway. Lamb v. Page, 153 M 171, 455 P 2d 337.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2152. Passing vehicles proceeding in opposite directions.

References

Cited in Hurly v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507; Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2153. Overtaking a vehicle on the left.

Duty of Overtaking Vehicle

Undisputed evidence that defendant waited until he was 20 to 25 feet behind plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was negligent in following too closely under the conditions, and summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. Farris v. Clark, 158 M 33, 487 P 2d 1307.

32-2156. Further limitations on driving to left of center, etc.

Contributory Negligence

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2133, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. Graveley v. Springer, 145 M 486, 402 P 2d 41.

Intersection

An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

Reliance on Markings

Defendant, who attempted to pass plaintiff's truck within one hundred feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line, which indicated that passing could be done lawfully at the point where the accident occurred. Faucette v. Christensen, 145 M 28, 400 P 2d 883.

Turning Vehicle

Plaintiff traveling at slow rate of speed on highway and indicating left turn with automatic signal, then turning left onto country road, was exercising proper care in turning, and driver, who struck plaintiff while attempting to pass while plaintiff was turning was negligent and proximate cause of accident, even though area may not have been an intersection within the meaning of this section and even though highway markings did not prohibit passing. Gammel v. Dees, — M —, 498 P 2d 1204.

32-2157. No-passing zones.

Duty of Other Driver

This section does not absolve a driver intending to turn left from the obligation under section 32-2167 of making certain that the turn can be made with reasonable safety so that plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. Bellon v. Heinzig, 347 F 2d 4.

32-2159. Driving on roadways laned for traffic.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

32-2160. Following too closely.

Preparing to Overtake

Undisputed evidence that defendant, rapidly approaching from behind, waited until he was 20 to 25 feet from plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was negligent in following too closely under the conditions, and summary judgment

for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. Farris v. Clark, 158 M 33, 487 P 2d 1307.

32-2167. Turning movements and required signals.

Duty To Look to Rear

Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily negligent in not looking to the rear before making a left-hand turn, since he could not rely on the presumption that he would not be passed in a no-passing zone. Bellon v. Heinzig, 347 F 2d 4.

Knowledge of Safety Not Required

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person know with absolute certainty that the turning movement can be made with safety. Holland v. Konda, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

Amendment

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the beginning of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

Repealing Clause

Section 2 of Ch. 175, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2171. Vehicle turning left at intersection.

Additional Duties

This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negative the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where plaintiff was making a left turn in a no-passing zone. Bellon v. Heinzig, 347 F 2d 4.

References

United States v. Clark, 247 F Supp 958.

32-2173. Vehicle entering highway from private road, driveway or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965.

Amendment

The 1965 amendment inserted "or public approach ramp."

Public Approach Ramp

Exit on state right of way from gravel road intersecting paved frontage road to interstate highway was public approach ramp within meaning of this section. Pachek v. Norton Concrete Co., — M —, 499 P 2d 766.

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and

yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963.

Amendment

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

32-2177. Pedestrians' right of way in crosswalk. (a) and (b). * * * [Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965.

Amendment

The 1965 amendment added subsection (c).

Repealing Clause

Section 2 of Ch. 54, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

32-2191. Obedience to signal indicating approach of train.

Jury Instructions

Failure of trial court to instruct jury that decedent had been contributorily negligent if he failed to stop, look and listen when either tracks or highway signs indicated the presence of a railway crossing was reversible error. O'Brien v. Great Northern Ry. Co., 145 M 13, 400 P 2d 634, cert. den. 387 US 920, 87 S Ct 2034.

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, and in addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in section 32-21-132.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height,

and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971.

Amendments

The 1965 amendment inserted "or is preparing to stop" after "which has stopped" in subsection (a); divided subsection (b) into the present first and third sentences of subsection (b); inserted the second sentence in subsection (b); and substituted "Red lights" for "which" at the beginning of the third sentence of subsection (b).

The 1971 amendment deleted "or is preparing to stop" after "any school bus which has stopped" in subsection (a); inserted "flashing red" before "signal" at the middle part of the section; deleted "or is signaled by the school bus driver to proceed as the visual signals are no longer actuated" from the end of subsection (a); and added "and in addition the driver * * * as specified in section 32-21-132" at the end of subsection (a).

Cross-References

Lettering requirement under school code, sec. 75-7002.

32-2198. Special lighting equipment on school buses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

32-2199. Stopping, standing, or parking, etc.

Visibility Impaired

This section prohibits stopping in a traffic lane even under weather conditions causing poor visibility. Kirby v. Kelly, — M —, 504 P 2d 683.

32-21-101. Stopping, standing, or parking prohibited in specified places.

Negligence as Matter of Law

Crane driver whose crane was blocking bridge was not negligent as matter of law even though he parked crane on bridge in violation of statute proscribing drivers from parking vehicles upon bridge where suit was between driver of automobile which stopped to avoid crane and driver of second automobile which rear-ended first. Jimison v. United States, 427 F 2d 1133, affirming 267 F Supp 674.

32-21-105. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two (2) motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two (2) abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967.

Amendments

The 1967 amendment numbered the first paragraph as subsection (1); inserted "on public streets or highways" after "motorcycle" in that subsection; and added subsections (2) through (8).

32-21-105.1. Headgear required for motorcycle riders—noise suppression devices. (1) The operator and passenger, if any, of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. Such headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation.

History: En. Sec. 1, Ch. 398, L. 1973.

Title of Act

An act to regulate the operation of motorcycles.

32-21-108. Coasting prohibited.

Emergency Action

Violation of this section by traveling on a downgrade with the clutch manually disengaged was not negligence per se where violation was involuntary in an emergency due to circumstances beyond driver's control. Duchesneau v. Silver Bow County, 158 M 369, 492 P 2d 926.

32-21-114. Scope and effect of regulations.

Military Personnel

Noncommissioned officer acting under direct order to engage in emergency snow removal project related to threatened flood and who was operating a tilt deck trailer upon a public highway without proper lights was immune from prosecution under this section. State of Montana, County of Fergus, Township of Lewistown v. Christopher, 345 F Supp 60.

32-21-118. Tail lamps.

County Road Grader

Statute requiring that tail lamps be not more than 72 inches from ground did not apply to county road grader on which two red tail lamps had been mounted ten feet from ground; motorist suing county for injury sustained when auto struck road grader from rear was not entitled to instruction that statute had been violated and that county was therefore negligent as matter of law. Bernhard v. Lincoln County, 150 M 557, 437 P 2d 377.

32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass. (a) Every vehicle, including animal-drawn vehicles and vehicles referred to in section 32-21-114 (c), not specifically required by the provisions of sections 32-21-114 to 32-21-153 to be equipped with lamps or other lighting devices, shall at all times specified in section 32-21-115 be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(b) It shall be unlawful, after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural or county roads and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than twenty-five (25) miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five (25) miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (c) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(c) The emblem required by subsection (b) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of fourteen (14) inches and an altitude of twelve (12) inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths (1¾) inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen (14) inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of three (3) to five (5) feet above the roadway, and shall be maintained in a clean, reflective condition.

(d) Any person violating the provisions of this section shall be subject to penalty as provided for in section 32-21-157.

(e) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an

overtaking vehicle being operated in conformity with section 32-2144, R. C. M. 1947, does not have a clear lane for passing as required by section 32-2155 and section 32-2156, R. C. M. 1947, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969.

Amendments

The 1969 amendment added subsections (b) through (e); and designated the first paragraph as subsection (a).

32-21-132. Audible and visual signals on vehicles. (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(d) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 32-2175 and 32-2197.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965.

Amendment

The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).

32-21-143. Repealed.

Repeal

This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-143.1. Brake equipment required. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be

capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other

pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Resorvoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20%). Each reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes

and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965.

Compiler's Notes

Section 53-639, referred to in subdivisions (a) and (c) 4 of this section, was repealed by Sec. 12-109, Ch. 197, L. 1965.

Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and specifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing performance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

DECISIONS UNDER FORMER LAW

Double Jeopardy

Conviction under former section 32-21-143 did not bar prosecution for involuntary manslaughter arising out of the same accident in subsequent action, because proof of the latter requires proof of an additional fact. State v. McDonald, 158 M 307, 491 P 2d 711.

32-21-143.2. Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations	43.5%	14	40
D All other vehicles and combinations of vehicles	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

32-21-143.3. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

32-21-143.4. Hydraulic brake fluid. (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this

section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965.

Repealing Clause

Section 5 of Ch. 139, Laws 1965 read "Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

32-21-144. Brakes on motor-driven cycles.

Compiler's Notes

Section 32-21-143, referred to in subsection (a) in the parent volume, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-149. Restrictions as to tire equipment. (a). * * * [Same as parent volume.]

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as herein provided shall be permitted only between the first day of October and the last day of May of each year, except that one such tire may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(d) * * * [Same as parent volume.]

(e) Any person violating the terms of this act shall be guilty of misdemeanor.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973.

Amendments

The 1967 amendment inserted "the" before "roadway" in subsection (b); and inserted "or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal" after "proportions" in subsection (c).

The 1971 amendment inserted "which shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread" near the end of the first sentence of subsection (c); added the second sentence to subsection (c); and added subsection (e).

The 1973 amendment added the last sentence to subsection (c).

32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty. (a) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck-tractor, trailer or semitrailer, as defined in sections 32-2102 to 32-2105, R. C. M. 1947, inclusive, upon the public highways without having first equipped the rearmost wheels or set of wheels

of such vehicle with fenders, splash aprons or flaps. Such fenders, splash aprons or flaps shall be designed, constructed and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(1) If the vehicle is equipped with fenders the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(2) If the vehicle is equipped with splash aprons or flaps the same shall extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(3) If the vehicle is in excess of eight thousand (8,000) pounds gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty.

(4) If the vehicle is eight thousand (8,000) pounds, or less, gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than twenty (20) inches above the surface of the highway when the vehicle is empty.

(b) Fenders, splash aprons or flaps, as used in paragraph (a) of this section shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(1) When measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(2) Such fender, splash apron or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels.

(c) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars ($10) nor more than twenty-five dollars ($25), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 286, L. 1969.

Title of Act

An act to require fenders or covers on certain wheels of specified types of motor vehicles; defining the dimensions and locations of such fenders or covers; and providing penalties for any violation of this act.

32-21-150.1. Seat belts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965.

Title of Act

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966 models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

32-21-150.2. Specifications for seat belts. All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965.

32-21-150.3. Penalty for seat belt violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars ($100.00).

History: En. Sec. 3, Ch. 115, L. 1965.

32-21-155.1. Semiannual inspection of school buses. (1) The Montana highway patrol shall perform the semiannual inspection of school buses one of which shall be at least thirty (30) days prior to the beginning of the school term and reinspect the buses, if necessary, before the beginning of the school term.

(2) The Montana highway patrol's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973.

Amendments

The 1973 amendment substituted "semiannual inspection" for "annual inspection" in subsection (1); inserted "one of which shall be" before "at least thirty (30) days" in subsection (1); and substituted the reference to the board of public education for a reference to the state board of education at the end of subsection (2).

Cross-References

Reimbursement to schools for transportation of pupils, sec. 75-7018.

32-21-161. Commercial tow car requirements.

Application Limited

Where logging truck was struck from behind while engaged in removing disabled automobile from ditch, contention that logging truck violated this section by not being equipped with appropriate warning and safety devices was without merit since this section applies to tow cars and not vehicles such as logging truck herein involved. State ex rel. Eacker v. District Court, 154 M 36, 459 P 2d 686.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has

unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars ($50), provided such child shall not be imprisoned for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "or a justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

32-21-166. Vehicle equipment safety compact—text. This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish

this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency

or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third (1/3) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall

indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor

to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965.

Compiler's Notes

Nebraska, pursuant to Legislative Bill 923, has withdrawn from the Vehicle Equipment Safety Compact.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commission; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings;

providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal moneys for one-third (⅓) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing commission to establish advisory and technical committees; providing for entry into and withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

32-21-167. Legislative findings on equipment safety. The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

32-21-168. Equipment requirements continued in force. (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

32-21-169. State commissioner on vehicle equipment safety commission. The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

32-21-170. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agree-

ment with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

32-21-171. Governmental agencies to co-operate with equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

32-21-172. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

32-21-173. Equipment safety commission budgets. Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

32-21-174. Equipment safety commission accounts. Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965.

Repealing Clause

Section 10 of Ch. 109, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(o).

32-21-175. Governor as executive head for compact purposes. The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

Section 32-2201. Legislative findings.
32-2202. Legislative policy and intent.
32-2203. General definitions.

32-2201. Legislative findings. The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965.

Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

Title of Act

An act to be known as the Montana Highway Code, for the codification and general revision of the laws pertaining to highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312, 32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620, 32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

32-2202. Legislative policy and intent. Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the state highway commission custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state of Montana shall have integrated systems of highways, roads, and streets, and that the state highway commission, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently

in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965.

32-2203. General definitions. Subject to additional definitions contained in subsequent chapters of this code which are applicable to specific chapters or parts, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Authority"—Montana toll bridge authority.

(4) "Board"—Board of county commissioners.

(5) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(6) "Clerk"—County clerk and recorder.

(7) "Commission"—State highway commission.

(8) "Committee"—Local improvement district committee of supervisors.

(9) "Condemnation"—Taking by exercise of the right of eminent domain.

(10) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(11) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(12) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(13) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(14) "Eminent domain"—The right of the state to take private property for public use.

(15) "Engineer"—State highway engineer.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public highways designated by the commission subject to the approval of the

secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the commission.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the Montana toll bridge authority, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

History: En. Sec. 2-101, Ch. 197, L. 1965.

Compiler's Note

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

Cross-References

Highway commission functions transferred, sec. 82A-703.

CHAPTER 23—CLASSIFICATION OF HIGHWAYS

Section 32-2301. Classification—highways and roads.
32-2302. Lewis and Clark highway.

32-2301. Classification—highways and roads. (1) Public highways of this state are classed as follows:

(a) Federal-aid highways
(b) State highways
(c) County roads
(d) City streets.

(2) All highways which are not designated, selected, established, constructed, or maintained by the commission are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

32-2302. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

CHAPTER 24—ASSENT TO FEDERAL AID—STATE HIGHWAY COMMISSION, POWERS AND DUTIES

Section 32-2401. Assent to federal-aid acts.
32-2402. State highway commission.
32-2403. Commission members—qualifications—appointment.
32-2404. Commission members—bond—expenses.
32-2405. Commission—chairman—meetings.
32-2406. General power of commission.
32-2407. Commission to designate highways.
32-2408. Designation of highways not located entirely within the state.
32-2409. Duties of commission—reports.
32-2410. Compilation of statistics—investigation—consultation.
32-2411. Agreements concerning effects of weight on highways.
32-2412. Seeding along highways.

32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording.
32-2414. Relocation of utilities facilities—hearings—order.
32-2415. Relocation—costs.
32-2416. Relocation—definitions.
32-2417. Certification and payment of claims.
32-2418. Prosecution for violation.
32-2419. Ports of entry and checking stations authorized.
32-2420. Checking stations required at major points of entry into state.
32-2421. Co-operation in use of ports of entry and checking stations.
32-2422. Purposes of act.
32-2423. Purposes for which federal funds to be expended.
32-2424. Extent of interest acquired.
32-2425. Expenditure of funds.
32-2426. Commission to fence along state highways through open range where livestock a hazard—gates—"open range" defined.
32-2427. Commission to designate areas where fencing needed.

32-2401. Assent to federal-aid acts. (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The commission may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The commission may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The commission may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were designated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

32-2402. State highway commission. The state highway commission consists of five (5) members to be appointed by the governor with the consent of the senate. Members of the commission now holding office shall continue until the expiration of their terms.

History: En. Sec. 4-102, Ch. 197, L. 1965.

Cross-References

Commission continued as quasi-judicial board, sec. 82A-706.

Transfer of commission functions, sec. 82A-703.

32-2403. Commission members—qualifications—appointment. (1) Each member shall be a citizen of the United States and a resident of the state of Montana.

(2) One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(3) (a) The terms of office of the members of the state highway commission shall be for four (4) years, and shall expire on the first day of February.

(b) If a vacancy occurs, the governor shall appoint with the consent of the senate a person having the qualifications herein provided who shall hold office only for the unexpired portion of the term in which the vacancy occurs.

(4) (a) No two (2) members shall at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(b) Not more than three (3) members shall at the time of appointment or thereafter during their respective terms be members of the same political party.

(c) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee shall be a member of the commission.

(d) No member shall be removed from office by the governor before the expiration of his term except for a disqualifying change of residence or for a cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office.

History: En. Sec. 4-103, Ch. 197, L. 1965.

Cross-References

Terms of office of commission members after reorganization, sec. 82A-112(2)(b).

32-2404. Commission members—bond—expenses. (1) Each member shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars ($10,000).

(2) Each member shall receive twenty dollars ($20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each member shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of the commission. In no event shall a member's per diem payments exceed two thousand dollars ($2,000) in any one (1) year.

History: En. Sec. 4-104, Ch. 197, L. 1965.

32-2405. Commission—chairman—meetings. (1) Annually the commission shall elect one (1) of its members as chairman. Election as chairman shall not interfere with the member's right to vote on all matters before the commission.

(2) The commission shall meet at least once each month for the purpose of transacting business including the consideration of claims and the letting of contracts.

(3) Three (3) members shall constitute a quorum. No resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members.

History: En. Sec. 4-105, Ch. 197, L. 1965.

32-2406. General power of commission. The commission may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and abandon highways on the federal-aid systems and state highways. It may co-operate and contract with counties and municipalities to provide assistance in performing such functions on other highways and streets.

History: En. Sec. 4-106, Ch. 197, L. 1965.

Cross-References

Commission functions transferred, sec. 82A-703.

Judicial Review

Where state highway commission conducted investigations and held hearings to determine number of interchanges and their location with respect to new interstate highway and nearby town, and agreed that one interchange was sufficient, district court abused its discretion in issuing writ of mandamus ordering commission to construct two such interchanges since commission complied with this section and its decision cannot be disturbed unless clear abuse of discretion is shown. Erie v. State ex rel. State Highway Commission, 154 M 150, 461 P 2d 207, distinguished in 155 M 39, 47, 466 P 2d 594.

32-2407. Commission to designate highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on said highway, the continuity of said highway in relation to the state highway systems as the same may connect or tie into a unified system of federal-aid highways and the taxable valuations which are affected by said highway.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways and make necessary rules and regulations for the construction, repair, maintenance, and marking of state highways and bridges.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967.

Amendments

The 1967 amendment added the passage beginning, "taking into consideration" after "secondary system" at the end of subsection (2).

Cross-References

Commission functions transferred, sec. 82A-703.

Commission Regulations as Evidence

In action for wrongful death of driver of state highway truck while sanding road in snowstorm, it was error to admit into evidence Safety Manual adopted by highway commission and requiring that engineers, supervisors and foremen erect warning devices upon highway before beginning work since requirement imposed no duty upon deceased driver to erect warning devices. Williams v. Maley, 150 M 261, 434 P 2d 398.

32-2408. Designation of highways not located entirely within the state. (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though such highways are not located entirely and continuously within the boundaries of the state. Such designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) The commission may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of such highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965.

32-2409. **Duties of commission—reports.** The commission shall: (1) Make all rules and regulations necessary for its government.

(2) Maintain and preserve all its records in its office at the capitol, keeping its office open at such times as its business shall require.

(3) File and preserve:

(a) A record of all proceedings and orders pertaining to the matters under its direction.

(b) Copies of all plans, specifications, contracts, estimates and official acts.

(4) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs.

(5) Report as provided in section 2 [82-4002] of this act.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (5), substituted the specified reporting requirement for provisions detailing a required biennial report to the governor and the legislative assembly.

32-2410. Compilation of statistics—investigation—consultation. (1) The commission shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The commission and the state highway engineer may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The commission and the engineer shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. They shall at all times lend their aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965.

32-2411. Agreements concerning effects of weight on highways. (1) The commission may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965.

32-2412. Seeding along highways. (1) After a federal-aid or state highway is constructed, the commission shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The commission shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

History: En. Sec. 4-112, Ch. 197, L. 1965.

32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording. (1) Whenever the commission shall establish the location width, and lines of any new, reconstructed, or proposed highway, or declare any road, street or highway as a controlled access facility, it shall make a description and plan showing the center line and the established width, the immediate boundary lines of all private property over, across or through which said highway shall pass, the name or names of the owner thereof, the boundaries of that part of such private ownership as shall be included within the right of way of said highway and the parcel number assigned to that part of

each ownership included within said highway right of way, together with the project number under which said highway shall be or is proposed to be constructed or reconstructed.

(2) That reference to the project number, parcel number, and section, or quarter section, tract, block or lot from which the same has been subdivided shall constitute good and valid description of said parcel in all deeds given to or received from the state of Montana wherein any parcel shall be transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969.

Amendments

The 1969 amendment inserted reference to reconstructed highways in subsection (1) and added "the immediate boundary * * * to be constructed or reconstructed" and rewrote subsection (2) which formerly called for recording of description and plan and copy of commission resolution in a special book to be furnished to county clerk and recorder by the commission.

Effective Date

Section 2 of Ch. 131, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

32-2414. Relocation of utilities facilities—hearings—order. (1) After appropriate hearings, the commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of any utility in, on, along, over, across, through or under any project on any of the federal-aid systems.

(2) The commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965.

32-2415. Relocation—costs. Seventy-five per cent (75 %) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the commission as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965.

32-2416. Relocation—definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) Utility—Includes publicly, privately, and co-operatively owned utilities.

(2) Cost of relocation—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) Federal-aid systems—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) Interstate system—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

History: En. Sec. 4-116, Ch. 197, L. 1965.

32-2417. Certification and payment of claims. (1) All accounts and expenditures shall be certified by the state highway engineer and paid by the state treasurer upon warrants drawn by the state auditor out of the proper funds.

(2) The commission shall certify the fund against which the warrant is to be drawn and state the project to which the payment will apply.

(3) The commission shall keep accounts showing the amount of money received for each project and the itemized expenses therefor.

History: En. Sec. 4-117, Ch. 197, L. 1965.

32-2418. Prosecution for violation. The commission shall prosecute any person guilty of violation of this code.

History: En. Sec. 4-118, Ch. 197, L. 1965.

32-2419. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state of Montana, the state highway commission is hereby authorized and directed to establish from time to time temporary or permanent ports of entry or checking stations upon any highways in the state of Montana and at such places as the state highway commission shall deem necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965.

Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They did, however, become effective on the same date as the Highway Code, December 31, 1966.

Title of Act

An act authorizing and directing the state highway commission to establish temporary and permanent ports of entry and checking stations.

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-2420. Checking stations required at major points of entry into state. In addition to the power granted to the state highway commission in section 1 [32-2419] of this act, it shall be the duty of the commission to establish checking stations at convenient points on the major highways

entering this state, and such checking stations shall be kept open at all times.

History: En. Sec. 2, Ch. 137, L. 1965.

32-2421. Co-operation in use of ports of entry and checking stations. The state highway commission shall co-operate with all other agencies of this state, or any political subdivisions thereof, in the use of such ports of entry or checking stations, so that maximum use can be made of such facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965.

Budget

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

Effective Date

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

32-2422. Purposes of act. (1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to such highways.

(3) To entitle the state to receive and expend the three per centum (3%) nonmatching funds from the United States pursuant to the provisions of title 23, United States Code.

History: En. Sec. 1, Ch. 286, L. 1967.

Title of Act

An act providing for the acquisition of land for the restoration, preservation and enhancement of scenic beauty within and adjacent to federal-aid highways.

32-2423. Purposes for which federal funds to be expended. The state highway commission is authorized to expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967.

32-2424. Extent of interest acquired. The commission may acquire the fee simple or any lesser estate or interest as determined by the commission to be reasonably necessary to accomplish the purposes of this act. Such acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 286, L. 1967.

32-2425. Expenditure of funds. The commission shall expend only nonmatching funds authorized under the provisions of section 319 (b)

of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by this act.

History: En. Sec. 4, Ch. 286, L. 1967.

Effective Date

Section 5 of Ch. 286, Laws 1967 read "This act shall be effective on and after July 1, 1967."

32-2426. Commission to fence along state highways through open range where livestock a hazard—gates—"open range" defined. (1) The highway commission shall fence the right of way of any part of the state highway system that is constructed and/or reconstructed, after the effective date of this act, through open range where livestock present a hazard to the safety of the motorist where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) For the purpose of this act the term "open range" means all private and public lands in the state of Montana not inclosed by a fence of not less than four (4) wires in good repair but does not include herd districts as created and defined by section 46-1501, R. C. M. 1947.

History: En. Sec. 1, Ch. 311, L. 1969.

Title of Act

An act requiring the highway commission to fence highways that run through open range where livestock present a safety hazard to the motorist; defining open range for the purpose of this act; and authorizing the highway commission to determine where in open range areas there is a sufficient safety hazard from livestock to warrant fencing.

32-2427. Commission to designate areas where fencing needed. The highway commission shall designate the open range areas where livestock present a sufficient safety hazard to the motorist to warrant fencing by the highway commission.

History: En. Sec. 2, Ch. 311, L. 1969.

CHAPTER 25—STATE HIGHWAY ENGINEER AND OTHER EMPLOYEES

Section 32-2501. State highway administrator and other employees.
32-2502. Commission employees—salaries.
32-2503. Division of maintenance and control.

32-2501. State highway administrator and other employees. (1) The commission may appoint an executive officer to be known as the "state highway administrator."

(2) The administrator shall be solely responsible to the commission and shall be charged with directing operation of the highway department and implementing the policies established by the commission.

(3) The administrator shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require.

(4) The commission may remove the administrator at any time for cause.

(5) Wherever used in these codes the term "state highway engineer" or "engineer" shall mean "state highway administrator."

History: En. Sec. 4-201, Ch. 197, L. 1965; amd. Sec. 1, Ch. 312, L. 1967.

Compiler's Note

This chapter was designated as Part 2 of Chapter 4 of the Highway Code, en-

titled "State Highway Engineer and Other Employees."

Amendments

The 1967 amendment rewrote this section. Prior to amendment it read, "(1) The commission may appoint a professional engineer to be known as the 'state highway engineer,' and shall fix his salary; (2) The state highway engineer shall perform any acts or duties relating to the functions of the commission which the commission may impose; (3) The engineer shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require; (4) The commission may remove the engineer at any time for cause."

Separability Clause

Section 2 of Ch. 312, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Cross-References

Administrator's position abolished and functions transferred, sec. 82A-702(2).

Department abolished and functions transferred, sec. 82A-702(1).

32-2502. Commission employees—salaries. (1) The commission shall employ such personnel as it shall deem necessary and fix their compensation. Compensation shall be paid from funds deposited to the credit of the commission.

(2) The commission may, in its discretion, assign personnel for service to any county at the request of the board of county commissioners. The expense of this service shall be paid to the commission by the county.

History: En. Sec. 4-202, Ch. 197, L. 1965.

Cross-Reference

Commission functions transferred, sec. 82A-703.

Application

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to represent the Montana Highway Commission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. Woodahl v. State Highway Commission, 155 M 32, 465 P 2d 818.

32-2503. Division of maintenance and control. The commission may organize and operate a division of maintenance and control to maintain highways constructed by the state and, by co-operation with boards of county commissioners, such other highways as the commission may deem necessary.

History: En. Sec. 4-203, Ch. 197, L. 1965.

CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

Section 32-2601. Distribution and use of proceeds of gasoline dealers' license tax.
32-2603. Districts for apportionment of commission funds.
32-2604. Construction or reconstruction of bridges.
32-2605. Apportionment of state construction funds.
32-2606. Apportionment of state funds to federal-aid primary highway system.
32-2607. Apportionment of state funds to federal-aid secondary highway system.
32-2608. Secondary highway information.
32-2609. Apportionment of state funds to federal-aid interstate highway system.
32-2610. Increases in expenditures.
32-2611. Apportionment of state funds to federal-aid urban highways.
32-2612. Interim apportionment to match federal-aid funds.

32-2601. Distribution and use of proceeds of gasoline dealers' license tax. All money received in payment of license taxes under the provisions of sections 84-1845 to 84-1855, except those amounts paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended as provided in this section. So much of such money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. The legislative assembly hereby finds as a fact that the principal and interest and reserve requirements of bonds so authorized are a necessary cost of administering laws under which gasoline license taxes are derived, payment of highway obligations, and cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges. Subject to the foregoing provision, six-tenths of one per cent (.6%) of all such money shall be deposited in the state park account in the earmarked revenue fund. All of the remainder of such money shall be used and expended by the state highway commission on the federal-aid highways in this state selected and designated under the provisions of the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal-aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of sections 32-2605 through 32-2607; provided that nothing in this act shall be construed to conflict with said federal-aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds as provided in section 84-1818, R.C.M. 1947. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than six-tenths of one per centum (.6%) is used for propelling boats on waterways of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973.

Compiler's Notes

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, entitled "Distribution and Apportionment of Highway Construction Funds."

Section 84-1818, referred to in the last paragraph, was repealed by Sec. 20, Ch. 369, Laws 1969.

Amendments

The 1967 amendment reduced the percentage deposited in the state park account and the percentage specified in the second sentence of the second paragraph from one per cent to six-tenths of one per cent; substituted "section 32-2605 through 32-2607" for "sections 4-308 through 4-310" in the third sentence (now the sixth sentence) of the first paragraph; and added "except for the payment of refunds as provided in section 84-1818, R. C. M. 1947" at the end of the first sentence of the second paragraph.

The 1971 amendment inserted new first, second and third sentences in the first paragraph; inserted "Subject to the foregoing provision" at the beginning of the fourth sentence of the first paragraph; deleted "except that amount paid out of the state board of equalization's suspense account for gasoline tax refund" after "All other money received" at the beginning of the fifth sentence of the first paragraph; and made minor changes in phraseology and style.

The 1973 amendment deleted "pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana" at the end of the third sentence in the first paragraph.

Effective Date

Section 7 of Ch. 356, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-2602. Repealed.

Repeal

Section 32-2602 (Sec. 4-302, Ch. 197, L. 1965), relating to limitations on expenditures for administration, dissemination of public information and engineering connected with highway construction, was repealed by Sec. 1, Ch. 251, Laws 1969, effective March 6, 1969.

32-2603. Districts for apportionment of commission funds. All money available to the commission for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

District 1. Lincoln, Flathead, Lake.
District 2. Glacier, Toole, Liberty, Hill, Blaine.
District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
District 4. McCone, Richland, Dawson, Prairie, Wibaux.
District 5. Fergus, Garfield, Petroleum.
District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.
District 7. Lewis and Clark, Jefferson, Broadwater.
District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.
District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.
District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.
District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.
District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L. 1965.

32-2604. Construction or reconstruction of bridges. (1) The commission may allocate from state construction moneys available for the federal-aid highway system up to one million dollars ($1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would

prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the commission, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the engineer's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars ($500,000).

(b) On secondary bridges when the engineer's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment provided for in section 4-309 [32-2606], and for the secondary system before the apportionment provided for in section 4-310 [32-2607].

History: En. Sec. 4-307, Ch. 197, L. 1965.

32-2605. Apportionment of state construction funds. Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds to the various federal-aid highway systems as may be required to match the amounts of federal aid available for expenditure on each respective system, provided that the state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section and such cost shall be credited to the accounts of the highway system, financial district, county or urban city involved as an offset to the charges made to such accounts as a result of such final judgment. Said deductions may be made only when the amount of such judgments would prohibit or seriously impair the highway construction program in a financial district, county or urban city.

History: En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971.

Amendments

The 1971 amendment added the proviso to the first sentence; and added the second sentence.

Effective Date

Section 2 of Ch. 283, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

32-2606. Apportionment of state funds to federal-aid primary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleted mileage, the commission shall compare the present condition of the system with the latest

approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The commission shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The commission shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: En. Sec. 4-309, Ch. 197, L. 1965.

32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth (¼) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth (¼) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth (¼) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth (¼) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county therein on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment thereto. The amount of any such excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the commission shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the state department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the commissioner of state lands and investments.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965; amd. Sec. 12, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of subdivision (3)(c)(i).

32-2608. Secondary highway information. On or before August 30 of each year, the commission shall inform each board of county commissioners of: (1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Such other matters regarding secondary highway construction as the commission deems advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965.

32-2609. Apportionment of state funds to federal-aid interstate highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the commission in accordance with the provisions of the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L. 1965.

32-2610. Increases in expenditures. (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) Twenty-five per cent (25%) more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

History: En. Sec. 4-313, Ch. 197, L. 1965; amd. Sec. 1, Ch. 290, L. 1973.

Amendments

The 1973 amendment increased the percentage specified in subdivision (1) (a) from 15% to 25%.

32-2611. Apportionment of state funds to federal-aid urban highways. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each such city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any such excess expenditures shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965.

32-2612. Interim apportionment to match federal-aid funds. During the interim between legislative sessions, the department of highways is hereby delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this act to match federal-aid funds for highway systems or purposes not enumerated in this act. Such apportionment formulas shall be valid only until approved, modified or rejected by the next succeeding legislative session.

History: En. 32-2612 by Sec. 1, Ch. 402, L. 1973.

Title of Act

An act to permit the department of highways to apportion state construction funds during the interim between legislative sessions.

CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

Section 32-2701. Creation of authority—members—salary—officers—seal.
32-2702. Powers of authority.
32-2703. Resolution—estimates of costs.
32-2704. Limitations on placing of toll bridges.
32-2705. Contents of petition.
32-2706. Action by authority on petition.
32-2707. Powers of authority in connection with toll bridge bond issues.
32-2708. Reserve and contingency funds—deposit.
32-2709. Additional bond terms permitted.
32-2710. Toll charges—fixing—expiration.
32-2711. Revenue fund—sinking fund.
32-2712. Construction.
32-2713. State highway engineer—duties.
32-2714. Annual statement—records.
32-2715. Limitations on building bridges near toll bridges.
32-2716. Payment of bonds—free bridge.

32-2701. Creation of authority — members — salary — officers — seal. (1) There is hereby created the Montana toll bridge authority, composed of members of the commission, who shall receive no compensation other than that received as members of the commission.

(2) The chairman of the commission shall be the chairman of the authority, and the state highway engineer shall be the secretary-treasurer. All contracts, bonds, and other instruments shall be executed in the name of the authority by the chairman and attested by the secretary-treasurer.

(3) The authority shall adopt a seal bearing its name which shall be affixed to such bonds, instruments, and records as the authority or the chairman may direct.

History: En. Sec. 4-401, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 4 of the Highway Code, entitled "Montana Toll Bridge Authority."

Cross-References

Toll bridge authority abolished and functions transferred, sec. 82A-702(3).

32-2702. Powers of authority. (1) The authority shall adopt rules and regulations for its own government and for the administration of this part [chapter] and the execution of the powers and duties hereby conferred.

(2) The authority may establish and construct a toll bridge or toll bridges upon any of the public highways of this state, together with approaches, wherever found and determined to be necessary for advantageous, and practicable for crossing any stream or body of water.

(3) The authority may issue toll bridge revenue bonds to pay the cost of any toll bridge.

History: En. Sec. 4-402, Ch. 197, L. 1965.

32-2703. Resolution—estimates of costs. (1) Whenever the authority finds and determines that the construction of any toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making such finding and determination and declaring that public convenience and necessity require the construction of the toll bridge.

(2) The resolution shall contain preliminary estimates of:

(a) The cost of construction.

(b) The amount of money to be raised by the issuance of revenue bonds.

(c) The probable amounts of money, property materials, or labor, if any, to be contributed from other sources in aid of construction.

(3) The authority shall also estimate the costs of maintaining, repairing, and operating the toll bridge, and the revenues to be derived from it.

(4) No toll bridge shall be constructed unless the authority first finds and determines that the probable revenues will be sufficient to pay the costs of maintaining, repairing, and operating it, and to pay the principal and interest on revenue bonds issued to pay its costs.

(5) The failure of the authority to make the estimates required by

this section or to make them in proper form shall in no way affect the validity or enforceability of any revenue bonds.

History: En. Sec. 4-403, Ch. 197, L. 1965.

32-2704. Limitations on placing of toll bridges. (1) No toll bridge shall be authorized or constructed over or across any stream within a radius of fifty (50) miles of either side of any free public bridge existing on that stream unless there shall first have been filed with the authority a petition requesting its construction.

(2) The petition shall be signed by:

(a) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county in which the toll bridge is proposed to be constructed; or

(b) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of both counties when the toll bridge is proposed to be constructed upon a stream which constitutes the boundary between two (2) counties.

History: En. Sec. 4-404, Ch. 197, L. 1965.

32-2705. Contents of petition. (1) The petition shall contain a statement showing the location of the proposed toll bridge and the locations of all free public bridges existing upon the same stream within a radius of fifty (50) miles of the proposed toll bridge. It shall also contain a concise statement of facts showing that the proposed construction is necessary, advantageous, and practicable.

(2) Several copies of the petition identical in form may be circulated. Each person circulating a copy must attach his affidavit that the signatures appearing thereon are genuine and that the signers knew the contents at the time of signing.

(3) All copies from each county shall be attached together as to form a single petition. The petition shall have attached to it before it is filed with the authority a certificate of the county clerk and recorder showing whether or not it has been signed by not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county.

(4) The county clerk and recorder shall transmit the petition to the authority.

History: En. Sec. 4-405, Ch. 197, L. 1965.

32-2706. Action by authority on petition. (1) The authority shall meet and consider the petition within thirty (30) days after it is filed. It shall be the sole judge of the sufficiency of the petition.

(2) If the authority finds that the petition bears the required number of signatures and is in proper form, and finds and determines that the

construction of the proposed toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making that finding and determination. The resolution shall also contain the estimates and data required by section 4-403 [32-2703].

(3) The authority's finding of the sufficiency of the petition shall be conclusive in favor of any innocent holder of bonds issued as a result of the presentation of the petition.

History: En. Sec. 4-406, Ch. 197, L. 1965.

32-2707. Powers of authority in connection with toll bridge bond issues. (1) In connection with the issuance and in order to secure the payment of toll bridge bonds, the authority may:

(a) Pledge all or any part of the tolls, income, profit, and revenue of any such toll bridge, and covenant to pay such tolls, income, profit, and revenue into appropriate funds.

(b) Covenant to fix and establish such tolls, rates, and charges as will provide at all times enough funds to:

(i) Pay all costs of operation, maintenance, and repairs of the toll bridge.

(ii) Meet and pay the principal of and interest on all toll bridge bonds as they severally become due and payable.

(iii) Create such reserves for the principal and interest of such bonds and to meet contingencies in operation and maintenance as the authority shall determine.

(c) Make such additional covenants as to tolls, rates and charges as it shall deem necessary to secure the payment of bonds.

(2) No truck, trailer, or automobile licensed in the name of the state of Montana or the United States or any branch or department thereof shall be required to pay for crossing any toll bridge.

History: En. Sec. 4-407, Ch. 197, L. 1965.

32-2708. Reserve and contingency funds—deposit. (1) The authority may create a special fund or funds, in addition to those required by this part [chapter], for moneys reserved for principal and interest on bonds and for meeting contingencies in the operation and maintenance of any toll bridge.

(2) It may determine the depositary or depositaries in which such funds shall be deposited and the manner in which such deposits shall be secured. Any bank or trust company incorporated under the laws of this state may act as a depositary and may furnish such indemnifying bonds or pledge such securities as may be required by the authority.

History: En. Sec. 4-408, Ch. 197, L. 1965.

32-2709. Additional bond terms permitted. (1) The authority may:

(a) Provide for replacement of lost, destroyed, or mutilated bonds.

(b) Covenant against extending the time for the payment of the principal of or interest on any toll bridge bonds, directly or indirectly in any manner.

(c) Prescribe and covenant as to the events of default and terms and conditions upon which any or all toll bridge bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(d) Covenant as to the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation.

(e) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay toll bridge bonds, provide for their powers and duties, limit their liabilities, and provide the terms and conditions upon which the trustee or trustees or the holders or any proportion of them may enforce any such covenant.

(2) The authority may make such covenants and do any and all acts and things necessary or convenient or desirable in order to secure toll bridge bonds or to make them more marketable, notwithstanding that such covenants, acts or things may not be enumerated or expressly authorized. The legislative assembly intends to grant to the authority power to do all things in the issuance of toll bridge bonds and in providing for their security that may not be inconsistent with the constitution.

History: En. Sec. 4-409, Ch. 197, L. 1965.

32-2710. Toll charges—fixing—expiration. (1) The authority may fix and change rates of toll and other charges for all toll bridges built under the provisions of this part [chapter]. The rates and charges shall at all times be fixed at rates which will yield sufficient annual revenue to pay annual operating and maintenance expenses, to redeem and pay the principal of and interest on all bonds as they severally come due, and to create such reserves as the authority shall deem necessary.

(2) All tolls and other revenue shall constitute a trust fund for the security and payment of toll bridge bonds. They shall not be pledged for any other purpose as long as any of the bonds are outstanding and unpaid.

History: En. Sec. 4-410, Ch. 197, L. 1965.

32-2711. Revenue fund — sinking fund. (1) The authority shall adopt rules and regulations for the collection of tolls and the deposit thereof to the credit of the appropriate toll bridge revenue fund, and for the transfer therefrom to the appropriate sinking fund of money for the payment and redemption of bonds as they severally mature.

(2) The money remaining in each separate toll bridge revenue fund after providing the amount required for interest and redemption of bonds

shall be held and applied in accordance with the proceedings relating to the authorization of the bonds.

History: En. Sec. 4-411, Ch. 197, L. 1965.

32-2712. Construction. Whenever funds are available for the construction of any toll bridge, the commission shall let contracts by competitive bidding, after such notice and upon such terms as it shall prescribe.

History: En. Sec. 4-412, Ch. 197, L. 1965.

32-2713. State highway engineer—duties. The engineer shall have full charge of the construction, operation, and maintenance of all toll bridges authorized by the authority. Under the supervision of the authority, and subject to its rules and regulations, the engineer shall have charge of the collection of all tolls.

History: En. Sec. 4-413, Ch. 197, L. 1965.

32-2714. Annual statement—records. (1) The engineer shall keep full and complete accounts for each toll bridge constructed. Each year he shall cause to be prepared and filed in the office of the secretary of state a balance sheet and income and profit and loss statement showing the financial condition of each toll bridge.

(2) All books, records, and papers relating to toll bridges shall at all reasonable times [to] be open to the inspection of any citizen of the state.

History: En. Sec. 4-414, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted brackets around the word "to" in subsection (2) to denote surplusage.

32-2715. Limitations on building bridges near toll bridges. So long as any of the bonds issued for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge for public use over or across the stream upon which the toll bridge is located within a distance of twenty (20) miles on either side of the toll bridge. This prohibition does not apply to bridges in existence and being used at the time of the issuance of such bonds.

History: En. Sec. 4-415, Ch. 197, L. 1965.

32-2716. Payment of bonds—free bridge. When the bonds issued for the purpose of paying the cost of any toll bridge are retired, the cost of construction having thereby been repaid in full, the bridge shall thereafter be maintained and operated by the commission as a free bridge. The expense of any surveys and reports paid from the funds of the commission shall then be deemed fully repaid.

History: En. Sec. 4-416, Ch. 197, L. 1965.

CHAPTER 28—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR COUNTY ROADS

Section 32-2801. Powers and duties of county commissioners respecting county roads.
32-2802. Right of way—contracts—control of traffic.
32-2803. Plat books—surveyor—employees.
32-2805. Inspection of roads and construction work—compensation.
32-2806. Purchase of machinery and materials.
32-2807. Use of county road machinery.
32-2808. Width of road.
32-2809. Highways to follow subdivision or section lines.
32-2810. Auto passes excluding livestock.
32-2811. Auto passes on county roads.
32-2812. Limit on amount expended in road district.
32-2813. Reseeding of right of way areas.
32-2814. County supervisors to control weeds and exterminate weed seeds—charges.
32-2815. Board and others to furnish information.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners shall have general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such county roads as are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, cause to be done whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make such reports relating to roads under its supervision as may be requested by the commission.

History: En. Sec. 5-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the Highway Code, entitled "County Administration." This chapter was designated as Part 1 of Chapter 5, entitled "Board of County Commissioners Responsibility for County Roads."

32-2802. Right of way—contracts—control of traffic. (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction,

maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars ($1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965.

32-2803. Plat books — surveyor — employees. (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded therein with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map thereof, and a record of all proceedings with reference thereto.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform such other duties as may be prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(a) Nothing in this section shall be construed to alter or repeal the provisions of sections 5-308 and 5-309 of this chapter.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in part 3 (b) of this chapter (chapter 30 of this title)."

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967.

Compiler's Note

Chapter 197, Laws 1965, the Highway Code, contained no sections 5-308 and 5-309 as referred to in paragraph (3) (a) of this section.

Amendments

The 1967 amendment added "In counties without a county surveyor" at the beginning of the first sentence of subsection (4), and added "chapter 30 of this title" within parentheses at the end of the section.

Effective Date

Section 3 of Ch. 274, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

32-2804. Repealed.

Repeal

Section 32-2804 (Sec. 5-104, Ch. 197, L. 1965), relating to county contracts with the state or federal government for the construction of roads, was repealed by Sec. 1, Ch. 265, Laws 1973.

32-2805. Inspection of roads and construction work—compensation. (1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of thirty-three dollars ($33) per day and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973.

Amendments

The 1967 amendment increased payments to county surveyors and members of county boards of commissioners under subsection (2) from $15 to $20 per day.

The 1973 amendment increased the daily rate specified in subsection (2) from $20 to $33; and inserted "if he receives no other compensation for that day and is not on an annual salary" at the end of the first sentence in subsection (2).

32-2806. Purchase of machinery and materials. (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965.

32-2807. Use of county road machinery. Each board may, in its discretion, authorize and permit the use of any county highway or road machinery or equipment when not in use in any district, in connection with the construction, repair and maintenance of streets, avenues and

alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

History: En. Sec. 5-107, Ch. 197, L. 1965.

32-2808. Width of road. (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

History: En. Sec. 5-108, Ch. 197, L. 1965.

Applicability

Statute was intended by legislature to apply only to public roads which were laid out by official act of proper public officials and was never intended to apply to prescriptive easements. State v. Portmann, 149 M 91, 423 P 2d 56.

32-2809. Highways to follow subdivision or section lines. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En Sec. 5-109, Ch. 197, L. 1965.

32-2810. Auto passes excluding livestock. Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L. 1965.

32-2811. Auto passes on county roads. Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L. 1965.

32-2812. Limit on amount expended in road district. The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road

fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965.

32-2813. Reseeding of right of way areas. (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965.

32-2814. County supervisors to control weeds and exterminate weed seeds—charges. The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the commission does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs thereof shall be paid by the commission.

History: En. Sec. 5-114, Ch. 197, L. 1965.

32-2815. Board and others to furnish information. The board and road supervisor of any county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the commission, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: En. Sec. 5-115, Ch. 197, L. 1965.

CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

Section 32-2901. County to maintain bridges.
32-2902. Bridges over streams in cities and towns.
32-2903. Election to determine question of construction—bonds—special levy.
32-2904. Removal of obstructions and repair of bridges.
32-2905. Bridges under control and management of board—police regulations.
32-2906. Construction and maintenance of bridges crossing county lines.
32-2907. Ferries uniting two counties—report of ferrymen on joint ferries.

32-2901. County to maintain bridges. Each board shall maintain all public bridges other than those maintained by the commission.

History: En. Sec. 5-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, entitled "Board of County Commissioners Responsibility for Bridges and Ferries."

32-2902. Bridges over streams in cities and towns. (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half (½), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

History: En. Sec. 5-202, Ch. 197, L. 1965.

32-2903. Election to determine question of construction—bonds—special levy. (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars ($10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L. 1965.

32-2904. Removal of obstructions and repair of bridges. (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965.

32-2905. Bridges under control and management of board—police regulations. (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the

reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L. 1965.

32-2906. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965.

32-2907. Ferries uniting two counties—report of ferrymen on joint ferries. (1) When a public ferry, if constructed would unite two counties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965.

CHAPTER 30—COUNTY ROAD SUPERINTENDENT

Section 32-3001. County road superintendent—appointment and compensation.
32-3002. Duties of county road superintendent.
32-3003. Accounts and statements.
32-3004. Examination of superintendent's report—warrant for claims.
32-3005. Equipment, tools, and implements for use of superintendent.
32-3006. Employment of laborers—hiring of equipment.
32-3007. Construction of drains and ditches—penalty for obstructions.

32-3001. County road superintendent—appointment and compensation. (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

32-3002. Duties of county road superintendent. (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965.

32-3003. Accounts and statements. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L. 1965.

32-3004. Examination of superintendent's report—warrant for claims. At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L. 1965.

32-3005. Equipment, tools, and implements for use of superintendent. Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965.

32-3006. Employment of laborers—hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965.

32-3007. Construction of drains and ditches—penalty for obstructions. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars ($50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965.

CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

Section 32-3101. Duty of board to construct roads and levy assessments.
32-3102. Petition for construction or improvement of road.
32-3103. Resolution of public interest.
32-3104. Proceedings upon receipt of petition.
32-3105. Proceedings at meeting.
32-3106. Duties of committee and road superintendent.
32-3107. Report of county road superintendent—order creating district.
32-3108. Sharing of costs—order of board.
32-3109. Payment of county's share of expense.
32-3110. Formation and boundaries of district.
32-3111. Assessment of lands in each part—lien.
32-3112. Method of assessment.
32-3113. Appointment of inspector—compensation of inspector and committee.
32-3114. Construction by county—lien.
32-3115. Apportionment of costs—assessment roll—contents.
32-3116. Notice—confirmation—errors.
32-3117. Correction of errors—lien.
32-3118. Modes of payment of assessment.
32-3119. Immediate payment—notice to landowners.
32-3120. Contents of notice.
32-3121. Installment payment procedure—county treasurer to collect.
32-3122. Board provides method of payment.
32-3123. Order for issuance of bonds—form and contents.
32-3124. Notice in case of payment by special bonds—contents.
32-3125. Payment of assessment—redemption by payment.
32-3126. Issuance of special bonds to contractor—sale of bonds.
32-3127. Payment of interest—retirement.
32-3128. Collection of assessments by suit of owner of bonds.
32-3129. Auditing and payment of claims and accounts.
32-3130. Estimates of work completed—payment therefor.
32-3131. Disposition of residue of funds.

32-3101. Duty of board to construct roads and levy assessments. (1) Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 5 of the Highway Code, entitled "Local Improvement Districts."

32-3102. Petition for construction or improvement of road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds (2/3) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L. 1965.

32-3103. Resolution of public interest. Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L. 1965.

32-3104. Proceedings upon receipt of petition. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting.

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L. 1965.

32-3105. Proceedings at meeting. (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965.

32-3106. Duties of committee and road superintendent. (1) The committee and the surveyor or his deputy shall:

(a) Immediately view, examine, and survey the road petitioned for.

(b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.

(c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.

(d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.

(e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

History: En. Sec. 5-406, Ch. 197, L. 1965.

32-3107. Report of county road superintendent—order creating district. (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report.

(a) The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs and expenses shall not exceed fifty per cent (50%) of the total assessed valuation of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No. ——— in ——— county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L. 1965.

32-3108. Sharing of costs—order of board. The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

History: En. Sec. 5-408, Ch. 197, L. 1965.

32-3109. Payment of county's share of expense. The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L. 1965.

32-3110. Formation and boundaries of district. (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half (½) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L. 1965.

32-3111. Assessment of lands in each part—lien. (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L. 1965.

32-3112. Method of assessment. (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L. 1965.

32-3113. Appointment of inspector—compensation of inspector and committee. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars ($5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars ($3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L. 1965.

32-3114. Construction by county—lien. (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L. 1965.

32-3115. Apportionment of costs—assessment roll—contents. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965.

32-3116. Notice—confirmation—errors. (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "im-

mediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L. 1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L. 1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.

(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 5-420, Ch. 197, L. 1965.

32-3121. Installment payment procedure—county treasurer to collect. (1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971.

Amendments

The 1971 amendment substituted "fixed by the board of county commissioners in accordance with law" for "of six per cent (6%) per annum" at the end of the first sentence of subsection (2).

32-3122. Board provides method of payment. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L. 1965.

32-3123. Order for issuance of bonds—form and contents. (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten (10) years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. _____ in _____ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "at the rate of six per cent (6%) per annum" after "bear interest" in the second sentence of subsection (2); and made a minor change in style.

32-3124. Notice in case of payment by special bonds—contents. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and

mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965.

32-3125. Payment of assessment—redemption by payment. (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L. 1965.

32-3126. Issuance of special bonds to contractor—sale of bonds. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L. 1965.

32-3127. Payment of interest—retirement. (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or as soon thereafter as practicable. It shall state that special bonds No. _____ (giving the serial number or numbers of the bonds called) of

the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L. 1965.

32-3128. Collection of assessments by suit of owner of bonds. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5%) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L. 1965.

32-3129. Auditing and payment of claims and accounts. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L. 1965.

32-3130. Estimates of work completed—payment therefor. (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer to an amount not exceeding eighty per cent (80%) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L. 1965.

32-3131. Disposition of residue of funds. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

Section 32-3201. Time for payment of fees.
32-3202. Expiration date.
32-3203. License is transferable.
32-3204. Disposition of fees collected by county treasurer.
32-3205. Deposit of state highway moneys.
32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. Time for payment of fees. A person who owns or operates a vehicle subject to the fees provided in chapter 197, sections 6-201, 6-202, 6-203, 6-204, 6-205, 6-206, 6-207, 6-208, and 6-210 [32-3301 to 32-3308, 32-3310] and acts amendatory thereto shall pay the fees provided in this chapter.

Prior to or at the time of registration of such vehicle as required under Title 53, Revised Codes of Montana, 1947, and acts amendatory thereto, or prior to the operation of such vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of section 53-109.1 or section 53-109.2, the fees provided in this chapter shall be due and payable at the time of registration.

A person who makes application for license after the first day of July of any year shall pay one-half (½) of those fees.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967; amd. Sec. 1, Ch. 47, L. 1973.

Compiler's Note

Chapters 32 to 35, inclusive, of this title were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "A person who owns a motor truck, truck-tractor, trailer, semitrailer, bus, or new passenger motor vehicle and operates it

upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter. A person who makes application for license after the first day of July of any year shall pay one-half (½) of those fees."

The 1973 amendment added the second sentence to the second paragraph.

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965.

32-3203. License is transferable. The certificate, registration or license issued hereunder is transferable by the licensee to another truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car upon transfer of ownership of such truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. If a smaller vehicle is purchased, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "by the licensee * * * of the same type" for "only upon transfer of title or interest of the legal owner" at the end of the first sentence and deleted second and third sentences reading: "It is not transferable to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle."

32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in section 32-3201, R.C.M. 1947, each county treasurer shall retain five per cent (5%) of the fees collected by the county treasurer for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the commission. Such remittance shall be made on forms furnished to the county treasurer by the commission.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967.

Amendments

The 1967 amendment rewrote the first sentence of this section. Prior to amendment, it read, "At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5%) of the fees so collected for the cost of administration."

Separability Clause

Section 2 of Ch. 293, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-3205. Deposit of state highway moneys. (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) All moneys received for the use of the commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the commission.

(3) All moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the commission.

(4) Hereafter, all moneys collected for the commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L. 1965.

32-3206. Additional tax by municipalities prohibited — exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965.

CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES TAX ON VEHICLES—EXCESS WEIGHT PENALTIES

Section 32-3301. Additional fees on motor trucks and truck-tractors.
32-3302. Additional fees on trailers and semitrailers.
32-3302.1. Alternative additional fees on truck-trailer combinations.
32-3303. Additional fees—gross weight over 42,000 pounds.
32-3304. Additional fees—pole trailers, low-boys, and livestock.
32-3304.1. Additional fees—haulers of ready-mix concrete.
32-3305. Additional fees—house trailers.
32-3306. Additional fees—certain farm vehicles.
32-3307. Additional fees—buses.
32-3308. Additional fees—quarterly payment.
32-3309. Failure to pay additional fees—penalty.
32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking.
32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states.
32-3313. Temporary trip permits showing payment of fees—display.
32-3314. Time for payment of fees by nonresidents.
32-3315. Sales tax on new motor vehicles.
32-3316. Violation—penalty.
32-3317. Excess weight—penalties.

32-3301. Additional fees on motor trucks and truck-tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs.	$ 7.50
6,001 lbs. or more, and less than 8,000 lbs.	12.50
8,001 lbs. or more, and less than 10,000 lbs.	17.50
10,001 lbs. or more, and less than 12,000 lbs.	20.00
12,001 lbs. or more, and less than 14,000 lbs.	22.50
14,001 lbs. or more, and less than 16,000 lbs.	27.50
16,001 lbs. or more, and less than 18,000 lbs.	37.50
18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50

22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967.

Compiler's Note

This chapter was designated as Part 2 of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

Amendments

The 1967 amendment increased the fees under this section where applicable from $6 to $7.50; 10 to 12.50; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302. Additional fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use	$3.75
2,501 lbs. or more, and less than 6,000 lbs.	5.00
6,001 lbs. or more, and less than 8,000 lbs.	15.00
8,001 lbs. or more, and less than 10,000 lbs.	17.50
10,001 lbs. or more, and less than 12,000 lbs.	20.00
12,001 lbs. or more, and less than 14,000 lbs.	22.50
14,001 lbs. or more, and less than 16,000 lbs.	27.50
16,001 lbs. or more, and less than 18,000 lbs.	37.50
18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50
22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the

fees under this section where applicable from 3 to 3.75; 4 to 5.00; 12 to 15.00; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302.1. Alternative additional fees on truck-trailer combinations. In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, R.C.M. 1947, enacted as section 6-201, Laws of 1965, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

Up to 42,000 lbs.	$ 571.00
42,001 to 44,000 lbs.	631.00
44,001 to 46,000 lbs.	691.00
46,001 to 48,000 lbs.	752.00
48,001 to 50,000 lbs.	812.00
50,001 to 52,000 lbs.	871.00
52,001 to 54,000 lbs.	931.00
54,001 to 56,000 lbs.	992.00
56,001 to 58,000 lbs.	1,052.00
58,001 to 60,000 lbs.	1,112.00
60,001 to 62,000 lbs.	1,172.00
62,001 to 64,000 lbs.	1,233.00
64,001 to 66,000 lbs.	1,293.00
66,001 to 68,000 lbs.	1,352.00
68,001 to 70,000 lbs.	1,412.00
70,001 to 72,000 lbs.	1,473.00
72,001 to 74,000 lbs.	1,533.00
74,001 to 76,000 lbs.	1,593.00
76,001 to 78,000 lbs.	1,653.00
78,001 and over	65.50 per ton or fraction thereof.

Payment of the fees provided in this section shall exempt any semitrailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310, 32-3312, and 53-129.

Such trailers or semitrailers must be currently registered in another state or county.

Any trailer or semitrailer entering the state of Montana in combination with a truck or truck-tractor licensed under the above schedule may be moved in the local delivery zone in combination with a truck, truck-tractor, licensed under section 32-3301, R. C. M. 1947, without payment

of any additional fees on such truck or truck-tractor, trailer or semitrailer.

A permit must be obtained from the state highway commission before such truck-tractor is used in local service and such permit shall be continuous and issued at no fee. Such permit shall not be issued until proof of payment of fees under Schedule III has been established.

History: En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971.

Title of Act

An act amending section 32-1123, R. C. M. 1947, relating to maximum dimensions, weights and other characteristics and factors of vehicles, providing that limitations shall not exceed those for the federal interstate highway system until federal law permits states to exceed same; amending sections 32-3301, 32-3302, 32-3303, 32-3305 and 32-3306, R. C. M. 1947, enacted as sections 6-201, 6-202, 6-203 and 6-205, chapter 197, Laws of 1965, relating to additional fees on motor trucks, truck-tractors, trailers, semitrailers and house trailers and increasing the fees; providing that additional fees for each motor truck or truck-tractor, based upon maximum gross loaded weight of combinations with trailers and semitrailers, may be paid instead of additional fees provided for in sections 32-3301 and 32-3302, R. C. M. 1947, and allowing for exemptions; and providing an effective date.

Amendments

The 1971 amendment added the reference to section 53-129 at the end of the first paragraph after the schedule; and added the final three paragraphs.

Effective Date

Section 8 of Ch. 2, Ex. Laws 1967 read "This act is effective January 1, 1968."

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-3303. Additional fees—gross weight over 42,000 pounds. In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents ($62.50) for each two thousand (2,000) pounds, or fraction thereof.

History: En. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment substituted "32-3301 and 32-3302" for "6-201 and 6-202"; and increased the annual fee paid under this section from $50 to $62.50.

32-3304. Additional fees—pole trailers, low-boys, and livestock. There shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock and logs; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969.

Amendments

The 1969 amendment deleted reference to equipment used in hauling ready-mix concrete.

32-3304.1. Additional fees — haulers of ready-mix concrete. There shall be paid and collected annually a fee equal to fifty-five per cent (55%) of the fees provided in Schedule I and Schedule II, as provided in section 32-3301 and 32-3302, R. C. M. 1947, on concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively

for hauling ready-mix or ready-to-pour concrete and truck-tractors used exclusively in hauling concrete mixer semitrailers.

History: En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971.

Title of Act

An act to amend section 32-3304, R. C. M. 1947, as amended by chapter 197, Laws of 1965, by striking therefrom reference to equipment used in hauling ready-mix concrete; and providing for a new section to be numbered 32-3304.1, providing for the annual payment and collection on trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete of a fee equal to fifty-five per cent (55%) of the fees provided in Schedules I and II contained in sections 32-3301 and 32-3302.

Amendments

The 1971 amendment made a minor change in style and substituted "concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers" at the end of the section for "trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete."

32-3305. Additional fees—house trailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided, a fee equal to seventy-five cents ($.75) for each foot of over-all trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fee under this section from 50¢ to 75¢.

32-3306. Additional fees—certain farm vehicles. Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to sixteen per cent (16%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be six dollars ($6). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 143 and once by Ch. 2 (Ex. Sess.). Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendment made by both 1967 acts.

Amendments

Chapter 143, Laws of 1967, inserted "and on one truck tractor * * * in direct benefit to agriculture" after "orchard or dairy"; and increased the minimum fee to be paid by farm vehicles from $4 to $6.

Chapter 2 (Ex. Sess.), Laws of 1967, decreased the percentage of the fee equal to fees provided in Schedule I under this section from 20 to 16 per cent; and increased the minimum fee from $4 to $6.

32-3307. Additional fees—buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars ($7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965.

32-3308. Additional fees—quarterly payment. When the gross weight of any vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth (¼) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar ($1) shall be charged. The commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

History: En. Sec. 6-208, Ch. 197, L. 1965.

Cross-References

Highway commission functions transferred, sec. 82A-703.

32-3309. Failure to pay additional fees—penalty. No vehicle licensed under the provisions of section 6-208 [32-3308] shall be operated over the public highways unless the owner or operator thereof within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of any such three-month period shall apply for and pay the required fee for a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, shall be guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police may impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol until such requirement is met.

History: En. Sec. 6-209, Ch. 197, L. 1965, amd. Sec. 2, Ch. 292, L. 1967.

Amendments

The 1967 amendment substituted "ten (10) calendar days or seven (7) business days as provided by law, whichever is greater" for "ten (10) days" wherever found in this section; and substituted "may" for "shall" after "city police" in the last sentence.

32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking. (1) In lieu of the gross weight fees pro-

vided in sections 6-201 to 6-208 [32-3301 to 32-3308] of this chapter, the owner of any motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of sections 53-114, 53-122, and sections 6-201 and 6-203 [32-3301 and 32-3303] of this chapter.

(b) By registering such trailers in accordance with the provisions of sections 53-114 and 53-112, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of sections 6-202 and 6-203 [32-3302 and 32-3303] of this chapter on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) Vehicles on which fees are paid in accordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission.

(3) Nothing herein shall be construed as authorizing axle loads in excess to those established by section 32-1123.

History: En. Sec. 6-210, Ch. 197, L. 1965.

Compiler's Note

The reference in paragraph (1) (b) to section 53-112 is apparently in error, and the intention may have been to refer to section 53-122.

32-3311. Repealed.

Repeal

Section 32-3311 (Sec. 6-211, Ch. 197, L. 1965), relating to markings of weight or capacity on trucks, truck-tractors and buses, was repealed by Sec. 2, Ch. 37, Laws 1971.

32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars ($5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents ($7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars ($10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965.

32-3313. Temporary trip permits showing payment of fees—display. (1) Temporary trip permits showing payment of the fees provided for in the last section shall be issued under such rules and regulations as may be prescribed by the commission. Such permit shall be displayed in the vehicle for which the fee has been paid at all times while such vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The commission may limit the operation of any such vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965.

32-3314. Time for payment of fees by nonresidents. A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any commission office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965.

Cross-References

Highway patrol functions transferred, sec. 82A-1206.

32-3315. Sales tax on new motor vehicles. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section shall mean automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent (1½%) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.

(b) One and one-eighth per cent (1⅛%) of the list price during the second quarter of the year.

(c) Three-fourths (¾) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths (⅜) of one per cent (1%) during the fourth quarter of the year.

(3) In case the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the highway commission may use any published price lists.

(4) The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit to the earmarked revenue fund of the state highway account.

(5) The new vehicle shall not be subject to any other assessment or taxation during the calendar year in which the original application for title is made.

History: En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967.

Amendments

The 1967 amendment, in subsection (1), deleted "passenger" before "motor vehicles" and added the present second sentence; substituted "earmarked revenue fund of the state highway account" for "commission" at the end of subsection (4); deleted "whether or not it is in the state on the first day of January of that year" at the end of subsection (5); and deleted subsection (6), which read, "The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406."

Repealing Clause

Section 6 of Ch. 290, Laws 1967 read "That section 84-6009, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 7 of Ch. 290, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

32-3316. Violation—penalty. Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars ($300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965.

32-3317. Excess weight—penalties. (1) The operator shall be subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued pursuant to section 53-107, or

(b) The gross vehicle weight shown on the gross vehicle weight receipt issued pursuant to section 53-620.

(2) The operator shall:

Immediately thereafter pay to the nearest county treasurer or state highway commission the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

History: En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971.

Amendments

The 1971 amendment deleted former paragraph (a) of subsection (1); redesignated former paragraphs (b) and (c) of subsection (1) as (a) and (b) respectively; deleted former paragraphs (a) and (c) of subsection (2); inserted "or state highway commission" after "nearest county treasurer" in former paragraph (b), now the sole paragraph of subsection (2); and deleted former subsection (3).

Repealing Clause

Section 2 of Ch. 37, Laws 1971 read "Section 32-3311, R. C. M., 1947, is repealed.

CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY TRANSPORTERS

Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.
32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.
32-3403. Disposition of funds collected.
32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.
32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.
32-3406. Exemptions from fees.

32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. (1) Every person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods where such vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or any lawful combination thereof, will be transported over the highways of the state of Montana but once, may annually apply to the registrar of motor vehicles for a permit to use the highways of this state, and shall pay, upon filing such application, a fee of one hundred dollars ($100). Upon processing of the application, the registrar of motor vehicles shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the registrar of motor vehicles for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and such plates or devices may be used on any vehicle being driven, towed or transported by and under the control of the permit holder. The registrar of motor vehicles shall collect the additional sum of one dollar ($1) for each pair of transit plates or devices applied for and issued.

(3) The registrar of motor vehicles shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the registrar of motor vehicles a one-trip fee of five dollars ($5) per driven vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by the registrar of motor vehicles.

History: En. Sec. 6-402, Ch. 197, L. 1965.

32-3403. Disposition of funds collected. The registrar of motor vehicles shall retain five per cent (5 %) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95 %) shall be remitted, on or before the fifteenth day of each month after collection, to the state treasurer for deposit to the credit of the commission.

History: En. Sec. 6-403, Ch. 197, L. 1965.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1. The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees. The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

32-3406. Exemptions from fees. The fees provided for drive-away or tow-away transporters shall not apply to:

(1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.

(2) Vehicles operated under dealers' licenses or plates.

(3) Vehicles registerable under any other provisions of law.

(4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES

Section 32-3501. Toll bridge bond issues—authorization—nature.
32-3502. Toll bridge bonds—maturity—interest.
32-3503. Toll bridge bonds—sale—registration.
32-3504. Toll bridge bonds—proceeds—insufficiency—surplus.
32-3505. Lien on moneys received from bonds.
32-3506. Separate funds—depositories.
32-3507. Construction fund—disposition of surplus.
32-3508. Revenue fund.
32-3509. Sinking fund.

32-3501. Toll bridge bond issues—authorization—nature. (1) The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds for the purpose

of paying the cost of any toll bridge. Each resolution providing for the issuance of bonds shall set forth and identify the toll bridge for which the bonds are to be issued. The bonds authorized by each resolution shall constitute a separate series identifiable by a series letter or letters.

(2) Each bond issued by the authority shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund provided for that purpose. Toll bridge bonds shall be secured only by the revenues from the toll bridge or toll bridges constructed with the proceeds of such bonds.

(3) All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities [Chapter 8, Title 87A].

(4) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery.

History: En. Sec. 6-501, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 5 of Chapter 6 of the Highway Code, entitled "Bond Issues for Toll Bridges."

32-3502. Toll bridge bonds—maturity—interest. (1) Toll bridge bonds shall mature at such time or times, not more than twenty (20) years from their date or dates, as may be fixed by the authority's resolution. However, they may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(2) The authority shall determine:

(a) The rate of interest such bonds shall bear.

(b) The time or times of payment of such interest.

(c) The form of the bonds and the interest coupons to be attached thereto.

(d) The manner of executing the bonds and coupons.

(e) The denomination or denominations of the bonds; and

(f) The place or places of payment of principal and interest, which may be at any bank or trust company.

(3) Prior to the preparation of definitive bonds, the authority may issue temporary bonds with or without coupons under the same restrictions as definitive bonds. Such bonds shall be exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

History: En. Sec. 6-502, Ch. 197, L. 1965; amd. Sec. 29, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding six per cent (6%) per annum" at the end of subdivision (2) (a).

32-3503. Toll bridge bonds—sale—registration. (1) The bonds authorized may be issued and sold from time to time, in such amounts as shall be determined by the authority. The authority may sell said bonds in such manner and for such price as it may determine to be in the best interests of the state. However, no such sale shall be made for less

than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of over six per cent (6 %) per annum to the purchaser upon the amount paid therefor.

(2) The authority may make provision for the registration of toll bridge bonds in the name of the owner as to principal alone or as to both principal and interest.

History: En. Sec. 6-503, Ch. 197, L. 1965.

32-3504. **Toll bridge bonds—proceeds—insufficiency—surplus.** (1) The proceeds of toll bridge bonds shall be used solely for the payment of the cost of the toll bridge constructed according to law for the payment of which such bonds were issued, and shall be disbursed in such manner and under such restrictions as the authority may provide.

(2) If such proceeds shall be less than the cost of any toll bridge, additional bonds may be issued in like manner to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the bonds, they shall be deemed to be of the same issue, entitled to payment from the same fund, and of equal preference as the bonds first issued for the same toll bridge.

(3) If such proceeds exceed the cost of any toll bridge, the surplus shall be paid into the fund provided for the payment of principal and interest of such bonds.

History: En. Sec. 6-504, Ch. 197, L. 1965.

32-3505. **Lien on moneys received from bonds.** There is hereby created and granted a lien in favor of the holders of any bonds issued by the authority for payment of the cost of a particular toll bridge upon all moneys received from any such bonds until such moneys are applied in payment of such bonds.

History: En. Sec. 6-505, Ch. 197, L. 1965.

32-3506. **Separate funds—depositories.** (1) The authority shall create three (3) separate funds for the bonds of each series issued:

(a) The toll bridge construction fund.

(b) The toll bridge revenue fund.

(c) The toll bridge sinking fund. Each fund shall be identified by the same series letter or letters as the bonds of such series.

(2) The money in the funds shall be deposited in any depository or depositories and secured in such manner as the authority may determine. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish indemnifying bonds or to pledge such securities as may be required by the authority.

History: En. Sec. 6-506, Ch. 197, L. 1965.

32-3507. **Construction fund—disposition of surplus.** (1) The proceeds of the bonds of each series issued by the authority shall be placed to the credit of the appropriate construction fund which shall at all times be kept segregated from all other funds.

(2) There shall also be credited to the appropriate construction fund:

(a) All interest accrued upon the bonds.

(b) All interest received upon the deposits of moneys in the fund.

(c) All money received by grant or donation from the United States or any other source for the construction of such toll bridge.

(3) The moneys in each construction fund shall be disbursed to pay the cost of the toll bridge for which such fund was created. Any surplus which may remain in any construction fund after providing for the payment and the cost of such toll bridge shall be added to the appropriate sinking fund.

History: En. Sec. 6-507, Ch. 197, L. 1965.

32-3508. **Revenue fund.** All tolls collected by the engineer under the supervision of the authority and subject to its rules and regulations shall be deposited to the credit of the respective toll bridge revenue fund designated by the authority.

History: En. Sec. 6-508, Ch. 197, L. 1965.

32-3509. **Sinking fund.** (1) In the resolution authorizing the issuance of each series of bonds, the authority shall provide for paying into the appropriate sinking fund at stated intervals all moneys then remaining in the revenue fund after paying all costs of operation, maintenance and repair of the toll bridge with respect to which such revenue fund was created.

(2) All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying:

(a) The interest upon the bonds as it becomes due.

(b) The necessary fiscal agency charges for paying bonds and interest.

(c) The principal of the bonds as they fall due.

(d) Any premiums upon bonds retired by call or purchase.

(3) Prior to the issuance of any bonds in a series the authority may provide by resolution for using the sinking fund or any part of such fund to purchase outstanding bonds payable from such fund. The price to be paid cannot exceed the price, if any, at which such bonds will be payable or redeemable at the next interest date. All bonds redeemed or purchased shall be canceled and no bonds issued in place thereof.

(4) The resolution authorizing any bonds may provide for a reserve for the payment of principal and interest. The moneys in each sinking fund, less such reserve, if not used within a reasonable time for the purchase of bonds for cancellation, shall be used to redeem bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 6-509, Ch. 197, L. 1965.

CHAPTER 36—COUNTY TAX LEVIES FOR ROAD AND BRIDGE CONSTRUCTION

Section 32-3601. General road tax.
32-3602. Special bridge taxes—levy and collection.
32-3603. Suburban railway to pay county for use of bridge.
32-3604. Special tax for construction and maintenance.
32-3605. Additional tax levy for road and bridge construction.

32-3601. General road tax. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than twelve (12) mills, except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971.

Compiler's Note

Chapters 36 to 38, inclusive, of this title were designated as Chapter 7 of the Highway Code, entitled "County Finance." This chapter was designated as Part 1 of Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

Amendments

The 1967 amendment increased the tax limit in subsection (1) from 10 to 12 mills.

The 1971 amendment inserted "except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills" in the first sentence of subsection (1).

32-3602. Special bridge taxes—levy and collection. (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars ($4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars ($4,000,000) nor more than twenty million dollars ($20,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to

the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973.

Amendments

The 1973 amendment increased the maximum taxable value of property specified in subdivision (2) (b) from twelve million dollars to twenty million dollars.

32-3603. Suburban railway to pay county for use of bridge. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth (¼) nor more than one-half (½) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [¼] nor more than one-half [½]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L. 1965.

32-3604. Special tax for construction and maintenance. Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965.

32-3605. Additional tax levy for road and bridge construction. (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of _____ mills upon the taxable property in the county of _____, state of Montana, for the purpose of constructing public highways and bridges?

☐ Yes

☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

Section 32-3701. County motor vehicle fund.
32-3702. Population centers—city road fund—county road fund.
32-3703. Population centers—use of city road fund.
32-3704. Other counties—county road fund—city road fund.

32-3705. Counties other than population centers—use of city road fund.
32-3706. Use of county road fund.
32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.

32-3701. County motor vehicle fund. All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

32-3702. Population centers—city road fund—county road fund. (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund":

(a) Fifty per cent (50 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city.

(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1930, or

(ii) Lying within one (1) mile of the limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1930.

(b) Twenty-five per cent (25 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1950, which city is located in a county which has an area of less than seven hundred and fifty (750) square miles.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

Amendments

The 1967 amendment substituted "1930" for "1960" in subdivision (a)(i) and (a)(ii), and substituted "1950" for "1960" in subdivision (b).

Repealing Clause

Section 2 of Ch. 89, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 89, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

32-3703. Population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon which work is to be done and in selecting the type of pavement to be used.

(4) The cost of supervision by the county surveyor shall not exceed five per cent (5 %) of the cost of the work.

History: En. Sec. 7-203, Ch. 197, L. 1965.

32-3704. Other counties—county road fund—city road fund. (1) In every county which does not have a city and area populated as provided in section 7-202 of this part [32-3702 of this chapter], the county treasurer shall divide the county motor vehicle fund between a "city road fund" and a "county road fund."

(2) The division shall be in the ratio determined by the board of county commissioners. The board shall determine the ratio by comparing the total number of miles of public streets and highways, which are not either state or federal highways, situated within the limits of incorporated cities and towns with the total number of miles of public streets and highways, which are not either state or federal highways, outside of such corporate limits; providing that state or federal roads may be counted if they are by written agreement maintained by the city or county.

History: En. Sec. 7-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 16, L. 1967.

Amendments

The 1967 amendment inserted "which are not either state or federal highways" after "streets and highways" each time those words appear and added the proviso at the end of subsection (2).

32-3705. Counties other than population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the treasurer of each incorporated city or town such proportion of the city road fund as directed by the board of county commissioners.

(2) The city or town treasurer shall hold the fund so paid in a separate "city road fund," which shall be used by the city or town council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-205, Ch. 197, L. 1965.

32-3706. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965.

32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, shall not be subject to registration of that equipment or be required to pay the fees and charges provided for

in the chapter "State Finance" [chapter 32 to 35 of this title]. Prior to any movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached thereto.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars ($5); provided, that such equipment for which a special mobile equipment plate is sought, shall be subject to the assessment of personal property taxes either on the date application is made for such plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March, provided further, that it is a condition precedent to the issuance of a special mobile equipment plate that the personal property taxes so assessed against the special mobile equipment, be paid. The fees collected under this act shall belong to the county road fund.

(3) The identification plate shall expire on March 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from the provisions of this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971.

Amendments

The 1967 amendment, in subdivision (2), inserted the provisos after "five dollars ($5)"; and, in subdivision (3), substituted "March 31" for "December 31."

The 1971 amendment inserted "or a dealers' license plate" before "attached thereto" at the end of subsection (1).

CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS

Section 32-3801. County commissioners may issue bonds.
32-3802. Negotiations for refunding.
32-3803. Single purpose highway—bridge.
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32-3801. County commissioners may issue bonds. (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5 %) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

History: En. Sec. 7-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 7 of the Highway Code, entitled "Bonds."

32-3802. Negotiations for refunding. (1) Whenever the total indebtedness of a county exceeds five per cent (5%) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "the constitutional limitation of" before "five per cent" in the preliminary paragraph of subsection (1).

32-3803. Single purpose highway—bridge. (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L. 1965.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent (2½ %) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent (2½ %), but will not exceed five per cent (5 %) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

History: En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100, and once by Ch. 391. The amendments were identical.

Amendments

Each of the 1973 amendments deleted a subsection (4) defining "value of the taxable property" in the same sense as in section 5 of article XIII of the 1889 constitution.

32-3805. Term—power to redeem—maximum interest. (1) No bonds issued under subsection (1) of section 7-301 of this part (32-3801) shall be for a longer term than twenty (20) years.

(2) No bond issued under subsection (2) of that section shall be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971.

Compiler's Note

The reference in subsection (2) of this section to subsection (2) of section 32-3801 may be in error. It may have been intended to refer to paragraph (1) (b) of section 32-3801.

Amendments

The 1971 amendment deleted from the beginning of subsection (4) "The maximum rate of interest which any bonds shall bear is six per cent (6%) per annum"; and made a minor change in style.

32-3806. Form of bonds. (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term "serial bonds" means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and redeemed each year shall be determined by dividing the total amount

of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars ($100), five hundred dollars ($500) or one thousand dollars ($1,000) as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965.

CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

Section

32-3901. Rights acquired by public in highway.
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32-3930. Assistance payments not income for state tax purposes.
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32-3901. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as Part 1 of Chapter 8, entitled "Acquisition and Disposition by State."

32-3902. **General power of commission to acquire interests in property.** Notwithstanding any other provision of law, the commission may acquire by purchase or any other lawful manner any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future highway purposes. The commission may acquire a fee simple or any lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965.

32-3903. **Purposes for which property acquired.** The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

(5) For parks adjoining or near any highway.

(6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.

(7) For drainage in connection with any highway.

(8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.

(9) For the construction and maintenance of stock lanes or trails.

(10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

History: En. Sec. 8-103, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote and conjectural and not within the purpose of former section 32-1615 (c). State Highway Commission v. Mott, 142 M 402, 384 P 2d 922.

Railroad Right of Way

Former section 32-1615 (k) permitted the state to condemn land in order to provide right of way for a railroad being moved to allow construction of public

highways. State ex rel. De Puy v. District Court, 142 M 328, 384 P 2d 501.

Rental of Unused Right of Way

The 1961 amendment of former section 32-1615 so as to give express authority for the rental of unused right of way rendered moot a taxpayer's action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 488.

Transfer of Land

Any manner of transferring unused highway right of way which was inconsistent with former section 32-1615 was by implication excluded. Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 488.

32-3904. Exercise of right of eminent domain—presumption. (1) Whenever the commission cannot acquire lands or other property or interests therein at a price or cost which it deems reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts a resolution declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 8-103 [32-3903].

(b) The interest described in the resolution and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The resolution shall create and establish a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965.

Burden of Proof

In order to attack the presumption raised by a resolution of public interest and necessity for condemnation of a strip of land without providing for a livestock underpass, landowner must introduce evidence as to the amount of his damages if the land is taken without building an underpass. State Highway Commission v. Parini, — M —, 496 P 2d 1140.

DECISIONS UNDER FORMER LAW

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, whereas the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

Judicial Interference

It is not within the province of the judicial branch of government to interfere with the exercise of eminent domain in the absence of clear and convincing evidence of arbitrariness or abuse of discretion by commission. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

Power To Condemn

The power of eminent domain is vested exclusively in the legislature, and can be exercised only by the legislature and those agencies to whom it has delegated the power. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Selection of Route

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

32-3905. Acquisition of whole parcel—sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in such shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the commission may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in such a shape or size as to come within the provisions of section 11-614, the commission shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965.

Amount of Property Which May Be Taken

Trial court did not exceed powers under statute when it limited amount of property sought to be appropriated by state to that portion of property actually needed for proposed highway improvement because question whether public interest required taking of entire parcel was question of fact to be determined by court; preliminary order of court limiting amount of appropriation to that actually required for construction of city street improvements was supported by evidence that excess land retained some value as separate parcel notwithstanding commission's argument that remaining land was financial remnant of such value as to be of little market value and give rise to claims over severance and other damages. State Highway Commission v. Chapman, 152 M 73, 446 P 2d 709.

32-3906. Power to acquire for future. (1) The power conferred by this chapter [chapters 39 and 40 of this title] to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The commission may lease unused portions of any lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on such terms and conditions as it may fix. The commission may repair, maintain, and care for such property in order to secure rent therefrom.

(3) All rent received shall be deposited to the credit of the commission.

History: En. Sec. 8-106, Ch. 197, L. 1965.

32-3907. Road building materials. (1) Any right of way or easement acquired by the commission for construction, operation, repair, reconstruction, or maintenance of highways shall include, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of any and all gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of this chapter [chapters 39 and 40 of this title], such gravel or materials shall be deemed to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965.

32-3908. No compensation in certain cases—exceptions. (1) Whenever the commission files a description and plan as provided in section 4-113 [32-2413] of this code, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of any buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 4-113 [32-2413] shall apply to crops or similar improvements planted on the lands described. They shall be governed by the provisions of section 93-9913.

History: En. Sec. 8-108, Ch. 197, L. 1965.

32-3909. Exchange of interests in real property. (1) The commission may determine that any interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of any highway. It may then exchange any such interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The commission may establish the manner and terms and conditions for such exchange.

(2) The owner from whom such interest was originally acquired by the state, or his successor in interest, shall have the right to require the commission to offer such land for sale in the manner set forth in sections 8-110 and 8-111 [32-3910 and 32-3911]. The commission shall notify such owner or successor in interest of its intention to exchange such interest. The owner shall make his demand for sale by registered mail to the commission within ten (10) days after receipt of notice from the commission.

History: En. Sec. 8-109, Ch. 197, L. 1965.

32-3910. Sale of interests in real property. The commission may sell any interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway. If the interest is reasonably of a value in excess of one hundred dollars ($100), sale shall be made to the highest bidder at public auction or by sealed bids as the commission may decide. The sale shall be conducted as provided in section 8-111 [32-3911].

History: En. Sec. 8-110, Ch. 197, L. 1965.

32-3911. Conduct of sale. (1) The commission shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held at the office of the commission at the capitol.

(2) Before any sale of any interest having a value in excess of one hundred dollars ($100), the commission shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) No sale shall be made of any interest unless it has been appraised within three (3) months prior to the date of the sale. No sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-111, Ch. 197, L. 1965.

32-3912. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the commission by registered mail within ten (10) days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965.

32-3913. Private sale if no bid or offer. (1) If, after proper notice is published, the commission receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At such sale, the commission may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-113, Ch. 197, L. 1965.

32-3914. Sale of personal property—maps, books, other printed matter. (1) The commission may sell at public or private sale, as it may determine, any interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway.

(2) The commission may sell at public or private sale, as it may determine, maps, books, pamphlets, or other printed matter, prepared or acquired by the commission. The commission may sell copies of any highway records to the public and may set reasonable prices therefor.

(3) The proceeds from sales made under the provisions of this section shall be paid into the state treasury to the credit of the commission.

History: En. Sec. 8-114, Ch. 197, L. 1965.

32-3915. Conveyances—execution—contents. (1) Any land or interest therein sold by the commission shall be conveyed only when full payment has been made therefor. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under the provisions of this part [chapter].

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965.

32-3916. Rendering irrigable lands unusable—unpaid construction costs. Whenever the commission acquires irrigable land for highway purposes, or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

The commission shall also pay a lump-sum amount to the district sufficient to produce on an amortized basis for a reasonable period not to exceed ninety (90) years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the commission and not overcome by bringing in new or additional land under irrigation. For the purpose of determining the amount of said lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the five (5) years, or so many years as the district has assessment experience, if less than five (5) years, preceding the date of acquisition.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969.

Amendments

The 1969 amendment added the second paragraph.

Effective Date

Section 2 of Ch. 299, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Cost of Future Operation and Maintenance

State highway commission is not obligated to pay irrigation district for future cost of operation and maintenance attributable to lands taken within irrigation district for highway purposes since lands taken will not continue to benefit from services of irrigation district, notwithstanding fact that takings have reduced total irrigable acreage of district and thereby increased per acre cost of operation and maintenance of district. Helena Valley Irrig. Dist. v. State Highway Commission, 150 M 192, 433 P 2d 791.

32-3917. **Abandonment or vacation of federal-aid or state highways.** Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965.

32-3918. **Highway crossing railroad, canal, or ditch.** (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965.

32-3919. **Rights of way for toll bridges.** (1) The authority may acquire by purchase or otherwise necessary rights of way for any toll bridge and approaches. It may exercise the right of eminent domain in the name of the state for those purposes.

(2) Whenever the authority cannot acquire by purchase any right of way which it deems necessary, it may direct the attorney general or any county attorney to procure it by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landowners.

(3) A right of way is hereby given, dedicated, and set apart for toll bridges and approaches thereto, through, over, upon, or across:

(a) Any property of the state, including highways.

(b) Any county road.

(c) Any street or alley.

Acquisition and use for toll bridge and approach purposes shall be deemed a superior and more necessary public use than the public use or purpose to which the highway, road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-119, Ch. 197, L. 1965.

32-3920. **Acquisition of property for controlled access facility.** (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over,

upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting former section 32-2006 (controlled access highway law) the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M. 1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. State Highway Commission v. Yost Farm Co., 142 M 239, 384 P 2d 277.

32-3921. Payment of moving expenses authorized. The payment of moving expenses shall be made to eligible persons in accordance with the provisions of this act and such rules and regulations as shall be adopted by the Montana highway commission.

History: En. Sec. 1, Ch. 212, L. 1969.

Title of Act

An act to provide for relocation assistance for persons affected by real property acquisitions for state highway purposes, and amending section 93-9913, R. C. M. 1947.

32-3922. Highway commission to adopt rules and regulations. The highway commission is authorized to adopt rules and regulations to implement the payment of expenses as authorized by this act.

History: En. Sec. 2, Ch. 212, L. 1969; amd. Sec. 1, Ch. 426, L. 1971.

Amendments

The 1971 amendment deleted "moving" before "expenses"; and deleted a former second sentence reading, "Such rules and regulations may include provisions authorizing payments made to individuals and families of fixed amounts not to exceed two hundred dollars ($200) in lieu of their respective reasonable and necessary moving expenses."

32-3923. Definitions. As used in this act:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or com-

modities in sufficient quantity to be capable of contributing materially to the operator's support.

History: En. Sec. 3, Ch. 212, L. 1969.

32-3924. Advisory assistance. (a) The commission is authorized to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the state highway systems.

(b) In giving such assistance, the commission may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for any project on the state highway systems.

History: En. Sec. 4, Ch. 212, L. 1969.

32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation. (a) As a part of the cost of construction the commission may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state, and actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subdivision in lieu of the payments authorized by subdivision (a) of this section may receive a moving expense allowance, determined according to a schedule established by the commission not to exceed three hundred dollars ($300), and in addition a dislocation allowance of two hundred dollars ($200).

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subdivision in lieu of the payment authorized by subdivision (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000). In the case of a business, no payment shall be made under this subdivision unless the commission is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this subdivision, the term "average annual net earnings" means one-half (½) of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project or during such other period as the commission determines to be more equitable for establishing

such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such two (2) year period. To be eligible for the payment authorized by this subdivision the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this subdivision.

History: En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971.

Amendments

The 1971 amendment added the language commencing with "actual direct losses" and continuing to the end of subdivision (a); increased the limits for moving expense allowance and dislocation allowance from $200 to $300, and from $100 to $200 respectively in subdivision (b); inserted the provision for a minimum payment of $2,500 in the first sentence of subdivision (c); increased the maximum payment under the first sentence of subdivision (c) from $5,000 to $10,000; and inserted "or during such other period as the commission determines to be more equitable for establishing such earnings" in the latter part of the third sentence of subdivision (c).

32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling. (a) In addition to the payments authorized by section 32-3925, the commission, as a part of the cost of construction, may make payments to the owner of real property acquired for a project on the state highway systems which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property.

(b) A payment not to exceed fifteen thousand dollars ($15,000), shall be the amount, if any, which, when added to the acquisition payment, equals the reasonable price required for a comparable dwelling determined, in accordance with standards established by the commission, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market.

(c) A payment, if any, which will compensate such displaced person for any increased costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such payment shall be made only if the dwelling acquired by the state was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of such dwelling. Such payment shall be equal to the excess in the aggregate interest and other debt service cost of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling under the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) The payment of reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs inci-

dental to the purchase of replacement dwelling but not including prepaid expenses.

(e) Such payment shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the commission, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project.

History: En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971.

Amendments

The 1971 amendment substituted "one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property" for "one (1) year prior to the first written offer for the acquisition of such property" in subsection (a); increased the maximum payment under subsection (b) from $5,000 to $15,000; substituted "reasonable price" for "average price" in subsection (b); inserted subsections (c) and (d); redesignated former subsection (c) as subsection (e); and made minor changes in style and phraseology.

32-3927. Additional payment for realty with other dwelling—period of occupancy—amount. (a) In addition to the payment authorized by section 32-3925, as a part of the cost of construction, the commission may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under section 32-3926, which dwelling was actually and lawfully occupied by such individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed four thousand dollars ($4,000), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four (4) years, or to make the down payment on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount of the down payment to purchase exceeds two thousand dollars ($2,000), such individual or family must equally match any such amount in excess of two thousand dollars ($2,000) in making the down payment.

History: En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971.

Amendments

The 1971 amendment increased the maximum payment under subsection (b) from $1,500 to $4,000; increased the rental period specified in subsection (b) from two to four years; added the exception to subsection (b); and made minor changes in style.

32-3928. Review of application for assistance—highway commission's decision final. Any displaced person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of a payment, may have his application reviewed by the highway commission, whose decision shall be final.

History: En. Sec. 8, Ch. 212, L. 1969.

32-3929. Rules and regulations. The commission is authorized to adopt rules and regulations to implement this act, and such other rules and regulations relating to highway relocation assistance as may be necessary or desirable under federal laws and the rules and regulations promulgated thereunder. Such rules and regulations shall include provisions relating to:

(a) A moving expense allowance, as provided in subdivision (b) of section 32-3925, for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed three hundred dollars ($300);

(b) The conditions for decent, safe, and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(d) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments and the amounts thereof.

History: En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971.

Amendments

The 1971 amendment increased the limit on moving expense allowance under subdivision (a) from $200 to $300; substituted "conditions" for "standards" in subdivision (b); and made a minor change in style.

Effective Date

Section 6 of Ch. 426, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

32-3930. Assistance payments not income for state tax purposes. No payment received by a displaced person under this article shall be considered as income for Montana state income tax purposes.

History: En. Sec. 10, Ch. 212, L. 1969.

32-3931. No new element of condemnation damages created. Nothing contained in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of damages not in existence on the date of enactment of this act.

History: En. Sec. 11, Ch. 212, L. 1969.

CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

Section 32-4001. Rights of way for county roads.
32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.
32-4003. Contents of petition.
32-4004. Investigation of petition—notice.
32-4005. Opening of road—survey.
32-4006. Determination of damages—declaration as road.
32-4007. Award of damages deemed rejected—proceedings to secure right of way.
32-4008. Damages and expenses to be paid out of county road fund.
32-4009. Change of road upon petition.
32-4010. Notice to district supervisor of opening of county road.
32-4011. Record of opening or changing road.
32-4012. Deeds and judgments for right of way—recording.
32-4013. County road crossing railroad, canal or ditch.
32-4014. Abandonment or vacation of county roads.
32-4015. Stock lanes.
32-4016. Board to transfer responsibility for right of way.
32-4017. Acquisition of property for public ferries and wharves.
32-4018. Acquisition of property for controlled access facility.

32-4001. Rights of way for county roads. (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

History: En. Sec. 8-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County."

Sewer Easement

County possesses sufficient interest in right of way for county road created by common-law dedication, to grant permission, without adjoining property owners' consent, for installation of municipal sewer under the road even if adjoining property owners are not allowed to connect with the sewer line. Bolinger v. City of Bozeman, 158 M 507, 493 P 2d 1062.

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road. Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

History: En. Sec. 8-202, Ch. 197, L. 1965.

32-4003. Contents of petition. The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

(2) The general route thereof.

(3) The lands and owners affected.

(4) Whether the owners who can be found consent thereto.

(5) Where consent is not given, the probable cost of the right of way.

(6) The necessity for, and advantage of, the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965.

32-4004. Investigation of petition—notice. (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965.

32-4005. Opening of road—survey. If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars ($7) per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965.

32-4006. Determination of damages — declaration as road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L. 1965.

32-4007. Award of damages deemed rejected—proceedings to secure right of way. (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L. 1965.

32-4008. Damages and expenses to be paid out of county road fund. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965.

32-4009. Change of road upon petition. (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L. 1965.

32-4010. Notice to district supervisor of opening of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L. 1965.

32-4011. Record of opening or changing road. When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L. 1965.

32-4012. Deeds and judgments for right of way—recording. (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L. 1965.

32-4013. County road crossing railroad, canal or ditch. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L. 1965.

32-4014. Abandonment or vacation of county roads. All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L. 1965.

32-4015. Stock lanes. [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to "stock lanes" in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

32-4016. Board to transfer responsibility for right of way. Each board shall transfer its control over, and responsibility for, any county road when the commission notifies it that: (1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the commission.

History: En. Sec. 8-216, Ch. 197, L. 1965.

32-4017. Acquisition of property for public ferries and wharves. (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965.

32-4018. Acquisition of property for controlled access facility. The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965.

CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

Section 32-4101. Letting of contracts on state and federal-aid highways.
32-4102. Competitive bidding.
32-4103. Bidder's security—contractor's bond.

32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 41 and 42 of this title were designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

32-4102. Competitive bidding. (1) When the estimated cost of any work exceeds one thousand dollars ($1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that such work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on any highway construction work financed in whole or in part by federal funds, the United States secretary of commerce affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with any board of county commissioners. Such contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or

feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and each board.

History: En. Sec. 9-102, Ch. 197, L. 1965.

32-4103. **Bidder's security — contractor's bond.** (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL IMPROVEMENT DISTRICTS

Section 32-4201. Contracts for county roads.
32-4202. Bids on county road contracts—award of contract.
32-4203. County road contractors to furnish bonds.
32-4204. Letting of contract for bridge.
32-4205. Letting of contract by local improvement district—bids.
32-4206. Improvement district contract—award.
32-4207. Execution of contract by board—limit on liability.

32-4201. **Contracts for county roads.** (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars ($1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

32-4202. **Bids on county road contracts—award of contract.** Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965.

Compiler's Note
The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4203. County road contractors to furnish bonds. Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965

32-4204. Letting of contract for bridge. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the commission has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965.

Compiler's Note
The compiler has inserted the bracketed references to R. C. M., 1947.

32-4205. Letting of contract by local improvement district—bids. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

History: En. Sec. 9-205, Ch. 197, L. 1965.

Compiler's Note
The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4206. Improvement district contract—award. (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4207. Execution of contract by board—limit on liability. The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965.

CHAPTER 43—CONTROL OF ACCESS

Section 32-4301. **Policy.**
32-4302. Definitions.
32-4303. Designation as controlled access highway—resolution—findings.
32-4305. Powers of highway authorities.
32-4306. Design of controlled access facility—entrance and exit restricted.
32-4307. New and existing facilities—elimination of grade crossings.
32-4308. Existing roads and streets as service roads.
32-4308.1. Maintenance of frontage roads.
32-4309. Marking of controlled access highway or facility with signs.
32-4310. Commercial enterprise or structure prohibited.
32-4311. Violations—penalties.

32-4301. Policy. The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to: (1) Highways included by the bureau of public roads in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting the former controlled access highway law (32-2001 et seq.) the legislature is presumed to have considered sections 93-9905 and 93-9911 R. C. M. 1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. State Highway Commission v. Yost Farm Co., 142 M 239, 384 P 2d 277.

32-4302. Definitions. When used in this chapter: (1) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(2) "Controlled access highway" means all portions of any interstate highway, throughway, or throughway intersection which the commission shall determine and designate for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view. It shall also mean those portions of spurs to the interstate highway system which the commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes all streets, alleys, public roads, private roads, and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(4) "Existing highway" means and includes all highways, roads, and streets established constructed, and in use on March 2, 1955. It shall not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means any state highway designated by agreement between the commission and the secretary of commerce as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and any public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965.

32-4303. Designation as controlled access highway—resolution—findings. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated

as a controlled access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969.

Amendments

The 1969 amendment deleted former subsection (2) which read, "The requirement by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution" and renumbered former subsection (3) as subsection (2).

32-4304. Repealed.

Repeal

Section 32-4304 (Sec. 10-104, Ch. 197, L. 1965), prohibiting the designation of a controlled access highway without a written petition from the municipal or county governing body, was repealed by Sec. 2, Ch. 436, Laws 1973. For new law, see sec. 32-4305 (2).

32-4305. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads or secondary highways, the department of highways shall not control access without the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

History: En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973.

Amendments

The 1973 amendment inserted "or secondary highways" in subsection (2); and substituted "the department of highways shall not control access without the consent" in subsection (2) for "each authority shall be subject to the consent."

Repealing Clause

Section 2 of Ch. 436, Laws 1973 read "Section 32-4304, R. C. M. 1947, is repealed."

32-4306. Design of controlled access facility—entrance and exit restricted. (1) Each highway authority may so design any controlled access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965.

32-4307. New and existing facilities—elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965.

32-4308. Existing roads and streets as service roads. (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965.

32-4308.1. Maintenance of frontage roads. All frontage roads shall be maintained by the state highway commission of the state of Montana.

History: En. Sec. 1, Ch. 90, L. 1965.

Compiler's Notes

This section was assigned inadvertently to Chapter 20 of Title 32 prior to repeal of Chapter 20 by Sec. 12-109, Ch. 197, L. 1965.

Title of Act

An act to provide for maintenance of frontage roads and amending section 32-2002 to define "frontage road."

32-4309. Marking of controlled access highway or facility with signs. Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

History: En. Sec. 10-109, Ch. 197, L. 1965.

32-4310. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965.

32-4311. Violations—penalties. (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars ($5) nor more than one hundred dollars ($100), or by imprisonment in the city or county

jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965.

CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

Section 32-4401. Good Roads day.
32-4402. Injuries to highways and trees.
32-4403. Excavations across highways—permits and bridging.
32-4404. Liability for permitting water to overflow.
32-4405. Highway encroachments—power to remove.
32-4406. Notice to remove encroachment.
32-4407. Penalty for failure to remove encroachment promptly.
32-4408. Removal of encroachment—actions—prosecution of offenses.
32-4409. Prosecution by county attorney.
32-4410. Dumping garbage or other debris or refuse.

32-4401. Good Roads day. The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

32-4402. Injuries to highways and trees. (1) The malicious injury of any highway, bridge, private way, or guidepost or inscription thereon is punishable as provided in sections 94-3201 and 94-3202.

(2) Every person who, without authority, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway is punishable as provided in section 94-3202 (2).

History: En. Sec. 11-102, Ch. 197, L. 1965.

Compiler's Notes

Section 94-3201, referred to at the end of subsection (1) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Section 94-3202, referred to in subsections (1) and (2), was repealed by Sec. 32, Ch. 513, Laws 1973, effective January 1, 1974.

32-4403. Excavations across highways—permits and bridging. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965.

32-4404. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume or canal, or stores, distributes or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

History: En. Sec. 11-104. Ch. 197, L. 1965.

Compiler's Notes

Section 94-3565, referred to at the end of subsection (2), was repealed by Sec. 32, Ch. 513, Laws 1973, effective January 1, 1974.

32-4405. Highway encroachments—power to remove. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965.

32-4406. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965.

32-4407. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately, or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars ($10) for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965.

32-4408. **Removal of encroachment—actions—prosecution of offenses.** (1) If the encroachment is denied, the road supervisor shall commence in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars ($10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars ($10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965.

32-4409. **Prosecution by county attorney.** The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965.

32-4410. **Dumping garbage or other debris or refuse.** (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(d) On privately owned property where hunting, fishing or other recreation is permitted, provided this subsection shall not apply to the owner, his agents or those disposing of debris or refuse with the owner's consent.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding one hundred dollars ($100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of this section on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969.

Amendments

The 1969 amendment added subdivision (d) to subsection (1); in subsection (2) increased the maximum fine from $25.00 to $100.00; and, in subsection (3), authorized game wardens to enforce anti-littering provisions on private property where public recreation is permitted, as well as on public recreational property.

CHAPTER 45—JUNKYARDS ALONG ROADS

Section 32-4513. Purposes of act.
32-4514. Definitions.
32-4515. License required.
32-4516. Issuance of license.
32-4517. Restrictions as to location.
32-4518. Junkyards lawfully in existence.
32-4519. Regulations governing screening.
32-4520. Authority to acquire interest in land for screening and removal of junkyards.
32-4521. Injunction.
32-4522. Agreements with the United States.
32-4523. Interpretation.

32-4501 to 32-4512. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 136, L. 1965), relating to the regulation of junkyards along roads, were repealed by Sec. 13, Ch. 285, Laws 1967.

32-4513. Purposes of act. (1) For the purposes of promoting the public safety, health and welfare, and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislative assembly hereby finds and declares that junkyards which do not conform to the requirements of this act are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967.

Title of Act

An act providing for the control of junkyards; setting forth definition; restricting location along certain highways; requiring an annual license and fee; requiring certain junkyards to be obscured by means of natural objects or fences; providing authority to purchase or condemn in certain situations; providing penalties for violation; and repealing sections 32-4501 through 32-4512, Revised Codes of Montana, 1947.

32-4514. Definitions. As used in this act only:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of title 23, United States Code, "Highways."

(2) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commission and approved by the secretary of transportation, pursuant to the provisions of title 23, United States Code, "Highways."

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling

junk; or for the maintenance or operation of an automobile graveyard; or a garbage dump or sanitary fill.

(5) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

History: En. Sec. 2, Ch. 285, L. 1967.

32-4515. License required. No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967; amd. Sec. 12, Ch. 410, L. 1973.

Amendments

The 1973 amendment deleted "from the commission" from the end of the section.

32-4516. Issuance of license. The department of health and environmental sciences, with the concurrence of the department of highways shall have the authority to issue licenses for the establishment, maintenance and operation of junkyards within the limits herein defined.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973.

Amendments

The 1973 amendment substituted "department of health and environmental sciences, with the concurrence of the department of highways" for "commission"; deleted "sole" before "authority"; and deleted the last four sentences, relating to license fees and expiration date.

Effective Date

Section 14 of Ch. 410, Laws 1973 read "This act is effective July 1, 1973."

32-4517. Restrictions as to location. No license shall be granted for the establishment, maintenance or operation of a junkyard within one thousand (1,000) feet of the nearest edge of the right of way of any highway on the interstate or primary systems except the following:

(1) Those which are screened by natural objects, planting, fences or other appropriate means so as not to be visible from the main traveled way of any such highway, or otherwise removed from sight.

(2) Those located within areas which are zoned for industrial use under authority of law.

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commission.

(4) Those which are not visible from the main traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967.

32-4518. Junkyards lawfully in existence. (1) Any junkyard lawfully in existence on the effective date of this act which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of any highway on the interstate or primary systems shall be fenced or screened, if feasible, by the commission at locations on the highway right of way or in areas acquired for such purposes

outside the right of way so as not to be visible from the main traveled way of any such highway.

(2) Notwithstanding any other provision of this act, any junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

History: En. Sec. 6, Ch. 285, L. 1967.

32-4519. Regulations governing screening. The commission may promulgate rules governing the materials to be used in, and the location, planting, construction and maintenance of screening or fencing required by this act.

History: En. Sec. 7, Ch. 285, L. 1967.

32-4520. Authority to acquire interest in land for screening and removal of junkyards. (1) When the commission determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the commission determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

(a) Lawfully in existence on October 22, 1965; or

(b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) Lawfully established on or after January 1, 1968.

(3) The commission shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967.

32-4521. Injunction. The commission may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967.

32-4522. Agreements with the United States. The commission may enter into agreements with the United States secretary of transportation as provided in title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of such agreements.

History: En. Sec. 10, Ch. 285, L. 1967.

32-4523. Interpretation. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution which are more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 285, L. 1967.

Separability Clause

Section 12 of Ch. 285, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 13 of Ch. 285, Laws 1967 read "Sections 32-4501 through 32-4512, Revised Codes of Montana, 1947, are repealed."

CHAPTER 46—TRAFFIC SAFETY PROGRAM

Section 32-4601. Purpose of act.
32-4602. Definitions.
32-4603. Montana highway traffic safety board.
32-4604. Organization.
32-4605. Duties.
32-4606. Funds.
32-4607. Local programs.

32-4601. Purpose of act. For the purpose of promoting the public safety, health and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is hereby declared to be in the public interest to establish a highway traffic safety program; provide for the administration thereof; implement, modernize and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings and surface treatment to improve safety thereof; establish an effective traffic control system; promote the adoption of a uniform vehicle code and law; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967.

Title of Act

An act for the establishment of a state highway traffic safety program, setting forth definitions; establishing administration thereof, authorizing political subdivision participation, permitting the acceptance of federal funds, the collection and expenditure of monies; providing for programs for driver education training and certification of instructors, regulation of schools including licensing thereof; adult driver training and retraining programs; research, development and procurement of practice driving facilities, simulators and teaching aids, licensing, revocation and regulation of drivers and operators of all motor vehicles.

32-4602. Definitions. (1) As used in this act, "governor" shall mean the governor of the state of Montana.

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents and deaths, injuries to persons and damage to

property. Such program shall be in accordance with uniform standards as are or may be established by the secretary of commerce of the United States under title 23, United States Code Annotated, as amended. Nothing herein shall restrict or prohibit the establishment of standards which enlarge or implement the federal standards.

(3) "Political subdivisions" shall mean every county, incorporated city or town and school district within the boundaries of the state.

(4) "Board" shall mean the Montana highway traffic safety board.

History: En. Sec. 2, Ch. 177, L. 1967.

32-4603. Montana highway traffic safety board. There is hereby created a Montana highway traffic safety board. The board shall be appointed by the governor.

History: En. Sec. 3, Ch. 177, L. 1967.

Cross-References

Board abolished and functions transferred, sec. 82A-902(1).

32-4604. Organization. The Montana highway traffic safety board shall meet once each month at the state capitol. It shall provide for office space, clerical help and such other personnel as may be necessary to carry out the intent of this act.

History: En. Sec. 4, Ch. 177, L. 1967.

32-4605. Duties. The governor shall be responsible for the administration of the highway traffic safety program. The governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this state, is hereby empowered to contract and to do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of that enactment, and any and all subsequent amendments thereto. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of such programs, certification of teachers, and the acceptance, allocation and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this act shall interfere with the provisions of chapter 51 or chapter 53 of Title 75, Revised Codes of Montana, 1947.

It shall be the duty of the board to advise and assist the governor in all matters of highway safety, and to establish comprehensive training programs, including, but not limited to, establishment and regulation of driver training schools and certification of said schools and instructors; establishment of adult training and retraining programs; to develop and procure practice driving facilities, simulators and other teaching aids for school and driver training use; to establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention; to establish a uniform system of driver licensing,

including, but not limited to, mental and physical standards, and to prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967.

Compiler's Notes

The Federal Highway Safety Act of 1966, referred to in this section, is compiled as sections 401 to 404 of Title 23, United States Code.

Chapters 51 and 53 of Title 75, referred to at the end of the first paragraph of this section, were repealed by Sec. 496, Ch. 5, Laws of 1971. For similar provisions in current law, see section 75-7303 and Chapter 79, Title 75.

32-4606. Funds. The governor and the highway traffic safety board is hereby authorized to enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be expended by the political subdivisions of said state in carrying out local approved highway traffic safety programs. Except as provided in this act, the governor is authorized to accept all gifts, money and funds to implement the purposes of this act; the expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of such expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967.

32-4607. Local programs. Except as provided in this act, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds shall be expended unless such approval is obtained. All local and state officials are hereby instructed and directed to co-operate with the governor and highway traffic safety board to accomplish the purposes of this act. The governor is hereby empowered to administer the highway traffic safety programs of this state and those of its political subdivisions, all in accordance with this act and federal rules and regulations in the implementation thereof.

History: En. Sec. 7, Ch. 177, L. 1967.

Separability Clause

Section 8 of Ch. 177, Laws 1967 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 9 of Ch. 177, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—OUTDOOR ADVERTISING ALONG HIGHWAYS

Section 32-4715. Legislative findings and policy—short title.
32-4716. Definition of terms.
32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits.
32-4718. Regulations controlling outdoor advertising.
32-4719. Standards for permitted advertising.
32-4720. Permits required—identification tags—pre-existing structures.
32-4721. Notice of violations—remedial action.
32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court.
32-4723. Acquisition of outdoor advertising rights—compensation.
32-4724. Agreements with secretary establishing specifications for advertising.

32-4725. More restrictive regulations preserved.
32-4726. Relaxation of regulations if federal law changed.
32-4727. Violation as misdemeanor.
32-4728. Nonconforming advertising as nuisance.

32-4701 to 32-4714. Repealed.

Repeal

Sections 32-4701 to 32-4714 (Secs. 1-14, Ch. 287, L. 1967; Sec. 1, Ch. 211, L. 1969; Secs. 1 to 4, Ch. 220, L. 1971), relating to zoning and outdoor advertising, were repealed by Sec. 17, Ch. 2, 2nd Ex. Laws 1971. For new law, see secs. 32-4715 to 32-4728.

32-4715. Legislative findings and policy—short title. (a) The legislature finds and declares that in order to promote the safety, convenience and enjoyment of travel on, and protection of the public investment in highways within this state, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right of way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this act and the rules and regulations promulgated by the commission, pursuant thereto. It is the intention of the legislature in this act to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by Congress in Title 23, United States Code, "Highways."

(b) This act may be cited as the "Outdoor Advertising Act."

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971.

Title of Act

An act to provide for the control of outdoor advertising adjacent to interstate and primary highway systems in compliance with the Highway Beautification Act of 1965; repealing sections 32-4701 through 32-4714, R. C. M. 1947, and providing an effective date.

32-4716. Definition of terms. As used in this act: (a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(b) "Primary system" means that portion of connected main highways, as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(c) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d) "Commission" means the state highway commission of Montana.

(e) "Secretary" means the secretary of the United States department of transportation.

(f) "Safety rest area" means an area or site established and maintained within or adjacent to the right of way by or under public supervision or control, for the convenience of the traveling public.

(g) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is used or reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public.

(j) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(k) "Commercial or industrial activities" means for purposes of subsection (j) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(i) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

(ii) Transient or temporary activities.

(iii) Activities not visible from the main traveled way.

(iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings.

(vi) Activities more than six hundred and sixty (660) feet from the nearest edge of the right of way.

(l) "Maintain" means to allow to exist, subject to the provisions of this act.

(m) "Maintenance" means to repair, refurbish, repaint or otherwise keep an existing sign structure in a state suitable for use.

(n) "Interchange" or "intersection" means those areas and their approach where traffic is channeled off or onto an interstate route including the de-acceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

History: En. Sec. 2, Ch. 2, 2nd Ex. L. 1971.

32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits. (a) No outdoor advertising shall be erected or maintained which is within six hundred and sixty (660) feet of the nearest edge of the right of way and which is visible from any place on the main traveled way, of an interstate or primary system, except:

(i) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, as authorized or required by law.

(ii) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(iii) Signs, displays and devices advertising activities conducted on the property upon which they are located.

(iv) Signs, displays and devices located in areas which are zoned industrial or commercial by a bona fide state, county or local zoning authority.

(v) Signs, displays and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the commission and the secretary and defined by regulations promulgated by the commission. The exception granted by this subsection shall not apply to signs, displays and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of nine (9) months.

(b) Outdoor advertising authorized under subsections (i), (iv), and (v) of subsection (a) of this section shall conform with standards contained in, and shall bear permits required in, regulations which are promulgated by the commission and this act.

History: En. Sec. 3, Ch. 2, 2nd Ex. L. 1971.

32-4718. Regulations controlling outdoor advertising. The commission is hereby authorized to make and promulgate regulations to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this act and in conformity with section 131 of Title 23, United States Code, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971.

32-4719. Standards for permitted advertising. Signs permitted under section 3 [32-4717] (a) (i), (ii), (iii), (iv), and (v) shall conform to the following requirements:

(a) Signs shall not be erected or maintained which exceed 1,200 square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length—60 feet.

(c) Maximum height—40 feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two facings visible and readable from the same direction on the main traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) No two signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(g) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway; unless such signs are in an incorporated area:

(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the state highway department or other state agency having and exercising such authority.

(v) Cemeteries.

(h) No sign may be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. Said five hundred (500) feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(i) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(iii) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(j) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets or

highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971.

32-4720. Permits required—identification tags—pre-existing structures. Within ninety (90) days after the effective date of this act, no signs authorized by subsections (i), (iv), and (v) of subsection (a) of section 3 [32-4717] may be constructed or maintained without a permit. Applications for permits shall be made to the commission on forms furnished by it. The commission shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign or signs thereon. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars ($6).

Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars ($3) without the filing of a new application. All fees received shall be paid into the state highway account in the earmarked revenue fund.

The commission shall issue with each new permit a permanent identification tag not larger than six (6) square inches which shall be affixed to the sign in a position readily visible from the highway.

Notwithstanding the foregoing provisions of this section, the commission shall issue permits and identification tags, upon application and payment of the requisite fee for any structure lawfully in existence on the day prior to the effective date of this act, and the permits shall thereafter be renewed for such period of time as is prescribed herein, unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971.

32-4721. Notice of violations—remedial action. When the commission determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair, or is unsafe, the commission shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within sixty (60) days or the permit will be revoked and action for removal of the sign commenced as provided in section 8 [32-4722] of this act. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971.

32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court. (a) The following outdoor advertising is deemed unlawful:

(i) When erected after the effective date of this act contrary to the provisions of this act; or

(ii) When a permit is not obtained as prescribed in this act; or

(iii) When a permittee fails to comply with a notice of violation as provided in section 7 [32-4721] of this act.

(b) The commission shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice in a conspicuous place on said structure, of its intention to remove the advertising deemed unlawful. Within forty-five (45) days after the notice, the owner of the land or of the structure may make written request for a hearing before the commission to show cause why the structure should not be removed. The commission shall keep a full and complete transcript and record of such hearing, make and enter its findings, conclusions and decisions in the matter and mail copies thereof by certified mail to the party or parties requesting the hearing.

The decision of the commission may be appealed to the district court in the county in which the structure is located. The court shall sustain the decision of the commission if it is supported by substantial evidence as shown by the records and exhibits. If there is no appeal from the commission's decision or if the commission's decision is affirmed, the party or parties requesting the appeal shall be liable for all costs incurred by the commission. Appeals shall be taken within thirty (30) days of the commission's decision by filing a notice and sending a copy of the notice to the commission by certified mail.

The commission shall forward its transcripts, records and exhibits to the district court having jurisdiction within thirty (30) days after receiving notice of such appeal. Appellant shall pay all costs of transcript and records.

If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at such hearing, or if the commission's decision is affirmed on appeal, the commission shall immediately remove the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land shall be jointly and severally liable for the costs of such removal. The commission shall incur no liability for causing this removal, except for damage caused by negligence of the commission, its agents or employees.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971.

32-4723. Acquisition of outdoor advertising rights—compensation. (a) The commission is hereby empowered and authorized to acquire by gift, purchase, agreement, exchange or eminent domain, any existing outdoor advertising and all property rights pertaining to same which were lawfully in existence on the effective date of this act, and which by reason of this act become nonconforming. Eminent domain shall be exercised in accordance with the provisions of the laws of the state of Montana.

(b) Just compensation shall be paid for outdoor advertising and all property rights pertaining to the same acquired through the process of eminent domain. The commission is empowered to remove outdoor adver-

tising found in violation of section 7 [32-4721] or 8 [32-4722] of this act without payment of compensation.

(c) Despite any contrary provision in this act, no sign shall be required to be removed without just compensation, unless found to be in violation of section 7 [32-4721] or 8 [32-4722] of this act. Except as provided in said sections 7 and 8 no sign shall be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section, and unless at such time the federal funds required to be contributed under section 131 (g) of Title 23, United States Code, with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971.

32-4724. Agreements with secretary establishing specifications for advertising. The highway commission of the state of Montana is authorized to enter into an agreement with the secretary regarding the size, lighting and spacing of outdoor advertising, as provided in this act, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement, and as provided in this act.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971.

32-4725. More restrictive regulations preserved. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which is more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 2, 2nd Ex. L. 1971.

32-4726. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways," or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then, the commission must amend or change such rules and regulations that it may have adopted to come into conformity with the federal law, rule and regulation; however, in no event shall this act become more restrictive than is indicated herein by said federal action.

History: En. Sec. 12, Ch. 2, 2nd Ex. L. 1971.

Nonconforming Uses

Section 13, Ch. 2, 2nd Ex. L. 1971, read: "Outdoor advertising contracted for prior to the enactment of this act and which under the provisions of the act becomes nonconforming shall not be regulated as such until January 1, 1972."

Separability Clause

Section 14 of Ch. 2, 2nd Ex. Laws 1971 read "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

32-4727. Violation as misdemeanor. Any person violating any provision of this act is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971.

32-4728. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this act are public nuisances.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971.

Repealing Clause

Section 17 of Ch. 2, 2nd Ex. Laws 1971 read "Sections 32-4701 through Section 32-4714, R. C. M. 1947, are hereby repealed."

Effective Date

Section 18 of Ch. 2, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 24, 1971.

CHAPTER 48—EXCAVATIONS IN PUBLIC STREETS

Section 32-4801. Definitions.
32-4802. Information to be sought before excavation made.
32-4803. Procedure—filing with county clerk and recorder.
32-4804. Liability for damage from failure to obtain information.
32-4805. Liability for negligence notwithstanding information obtained.
32-4806. Immunity from liability if information is not given within specified time.
32-4807. Exemption for emergency repairs.
32-4808. Information to be part of architects and engineers' plan.

32-4801. Definitions. The following definitions shall apply to this act:

(a) "Person" shall mean and include an individual, partnership, joint venture or corporation, and includes the employer of an individual.

(b) "Underground facility" shall mean any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas, or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the aforesaid.

(c) "Excavation" shall mean and include any ditch, trench, cut, hole or change in grade.

History: En. Sec. 1, Ch. 180, L. 1971.

Title of Act

An act requiring persons excavating in any public street, alley, right of way dedicated to public use or utility easement to obtain information as to existence therein of underground facilities, and providing civil penalties for failure so to do.

32-4802. Information to be sought before excavation made. No person shall make or begin any excavation in any public street, alley, right of way dedicated to the public use or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation or other person having the right to bury such underground facilities within the public street, alley, right of way or utility easement.

History: En. Sec. 2, Ch. 180, L. 1971.

32-4803. Procedure—filing with county clerk and recorder. Any person seeking information concerning the location of any underground facility must do so by request in writing. The person from whom such information is sought must acknowledge in writing receipt of such request and must provide such information in writing no later than the end of the normal business hours of the second full business day following the date of receipt [of] the request, Saturdays, Sundays and holidays excluded.

Every public utility, municipal corporation, or other person having the right to bury underground facilities, shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained.

History: En. Sec. 3, Ch. 180, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "of" near the end of the first paragraph of this section.

32-4804. Liability for damage from failure to obtain information. If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in section 3 [32-4803], then such person shall be liable to the owner of the underground facility for the entire cost of the repair of such facility.

History: En. Sec. 4, Ch. 180, L. 1971.

32-4805. Liability for negligence notwithstanding information obtained. The act of obtaining information as required by this act shall not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: En. Sec. 5, Ch. 180, L. 1971.

32-4806. Immunity from liability if information is not given within specified time. If information requested pursuant to section 3 [32-4803] of this act is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

History: En. Sec. 6, Ch. 180, L. 1971.

32-4807. Exemption for emergency repairs. The provisions of this act shall not apply to any person making repairs to an underground facility or repairs to the streets or alleys themselves in a situation of emergency when such repairs must be made within a shorter period of time than that provided for in section 3 [32-4803] of this act, provided, however, that this exemption from obtaining information shall not excuse the person making the repairs from any liability for damages caused by his negligence.

History: En. Sec. 7, Ch. 180, L. 1971.

32-4808. Information to be part of architects and engineers' plan. Architects and engineers designing or requiring excavating in or adjacent to any public street, alley or right of way dedicated to public use or utility easement shall obtain information as to underground facilities and then make said information a part of the plan by which the contractors operate. Nothing in this section shall excuse any person from the obligation imposed by section 2 [32-4802] of this act.

History: En. Sec. 8, Ch. 180, L. 1971.

Separability Clause

Section 9 of Ch. 180, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 33—HOMESTEADS

Chapter 1. Homesteads, 33-124.

CHAPTER 1—HOMESTEADS

Section 33-124. Homesteads—quantity and value of land.

33-124. (6968) Homesteads—quantity and value of land. Homesteads may be selected and claimed:

1 and 2. * * * [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of twenty thousand dollars ($20,000), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973. Cal. Civ. C. Sec. 1260.

Amendments

The 1965 amendment increased the maximum value of the homestead specified in paragraph 3 from $2,500 to $7,500.

The 1973 amendment increased the maximum value of a homestead specified in subdivision 3 from $7,500 to $20,000.

Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

TITLE 34—HOTELS

Chapter 2. Sanitation and control by state board of health, Repealed—Section 12, Chapter 18, Laws of 1967.
3. Licensing and regulation of lodging establishments, 34-301 to 34-307, 34-309, 34-310.

CHAPTER 2—SANITATION AND CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 12, Chapter 18, Laws of 1967, effective January 1, 1968)

34-201 to 34-217. (2485 to 2495, 2497 to 2502) **Repealed.**

Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1917; Secs. 1 to 13, Ch. 36, L. 1919; Sec. 1, Ch. 84, L. 1921), relating to sanitation of hotels and lodging houses, were repealed by Sec. 12, Ch. 18, Laws 1967, effective January 1, 1968. For present law, see 34-301 to 34-310.

CHAPTER 3—LICENSING AND REGULATION OF LODGING ESTABLISHMENTS

Section 34-301. Control and regulation of establishments required by public interest.
34-302. Definitions.
34-303. License required.
34-304. Fee—term of license.
34-305. Cancellation or denial of license—procedure.
34-306. Rules—co-operative agreements.
34-307. Inspections.
34-309. Penalty.
34-310. License fee—supersedes other fees.

34-301. Control and regulation of establishments required by public interest. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate insanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973.

Title of Act

An act to regulate establishments providing transient lodging space and/or accommodations; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; empowering state board of health of Montana to make and enforce all necessary regulations including sanitary standards for such establishments; providing for public hearing on rules and regulations; and to establish co-operative agreements with other Montana agencies; providing for inspection and report of inspection; empowering state board of health of Montana to issue subpoenas; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the re-

mainder; and repealing sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947, as amended or supplemented, and establishing effective date.

Amendments

The 1973 amendment deleted "transient" before "lodging space" in the first and second sentences; and made a minor change in phraseology.

34-302. Definitions. Unless the context requires otherwise in this act:

(a) "Person" includes an individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home or rooming house.

(b) "Board" means board of health and environmental sciences.

(c) "Department" means the department of health and environmental sciences.

(d) "Hotel or motel" includes a building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(e) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(f) "Transient guest" means a guest for only a brief stay, such as the traveling public.

(g) "Rooming house or retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three (3) or more persons on a weekly, semimonthly, monthly or permanent basis; with or without meals, but without separate cooking facilities for individual occupants.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973.

Amendments

The 1973 amendment inserted "retirement home or rooming house" at the end of subdivision (a); inserted "and environmental sciences" in subdivision (b); deleted former subdivision (c) defining "executive officer" and relettered subdivisions (d), (e) and (f), as (c), (d) and (e); inserted "and environmental sciences" at the end of subdivision (c); added subdivisions (f) and (g); and made minor changes in style and phraseology.

34-303. License required. Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home or rooming house, shall procure a license issued by the department. A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary. Existing licenses shall be renewed

as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

If determination is made to deny an initial application for a license, or if a renewal application is denied and a license canceled, the denial or cancellation shall be preceded by written notice of the grounds therefor and the opportunity to request a hearing before the board to show cause why the license should be denied.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973.

Amendments

The 1973 amendment inserted "retirement home or rooming house" in the first sentence of the first paragraph; substituted "Existing licenses shall be renewed" for "Such licenses shall be granted" at the beginning of the last sentence in the first paragraph; added the second paragraph; and made minor changes in punctuation and style.

34-304. Fee—term of license. (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of ten dollars ($10). These fees shall be deposited with the state treasury to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transferable nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973.

Amendments

The 1973 amendment increased the annual license fee from $5 to $10 in the first sentence of subsection (a); and substituted the present second sentence of subsection (a) for a sentence reading, "Fees collected by the department of health shall be transmitted to the state treasurer and placed to the credit of the general fund."

34-305. Cancellation or denial of license—procedure. (a) The executive officer of the department may cancel any license if he finds, after proper investigation by a representative of the department, that the licensee has violated provisions of this act or any regulation effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the executive officer of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by said executive officer shall be a bar to prosecution for violation.

(b) No license shall be denied or canceled by the executive officer of the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, licensee must make written request to the executive officer of the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(c) When a multiple type establishment is licensed by the department, the denial or cancellation of said license may affect the entire establishment or only a portion of same as determined by the executive

officer (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(d) Upon cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the executive officer for destruction or deletion of types of establishment as the executive officer may direct in his notice of cancellation.

(e) Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him.

(f) Whenever the department shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 18, L. 1967.

34-306. Rules—co-operative agreements. (a) The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

(b) The department is hereby authorized to enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973.

Amendments

The 1973 amendment deleted "and regulations" following "rules" in the first and second sentences of subsection (a); deleted from the end of the second sentence in subsection (a) a proviso requiring a public hearing on rules or regulations; deleted the third sentence of subsection (a) which provided for notice of the public hearing; and inserted "and fire and life safety code" at the end of the second sentence in subsection (a).

Repealing Clause

Section 6 of Ch. 485, Laws 1973 read "Section 34-308, R. C. M. 1947, is repealed."

34-307. Inspections. (a) The department, through its employees, and through local, county and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the board may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the

establishments listed and defined in section 2 [34-302], for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967.

34-308. Repealed.

Repeal

Section 34-308 (Sec. 8, Ch. 18, L. 1967), giving the board authority to issue subpoenas and take testimony, was repealed by Sec. 6, Ch. 485, Laws 1973.

34-309. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for the first offense, and not less than seventy-five dollars ($75) nor more than two hundred dollars ($200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars ($200) and imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 18, L. 1967.

34-310. License fee—supersedes other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 18, L. 1967.

Separability Clause

Section 11 of Ch. 18, Laws 1967 read "If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair nor invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

Repealing Clause

Section 12 of Ch. 18, Laws 1967 read "All acts or parts of acts in conflict herewith are hereby repealed and specifically sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947."

Effective Date

Section 13 of Ch. 18, Laws 1967 read "This act shall be effective January 1, 1968."

TITLE 35—HOUSING

Chapter 1. Housing authorities law, 35-103, 35-115, 35-128, 35-129.

CHAPTER 1—HOUSING AUTHORITIES LAW

Section 35-103. Definitions.
35-115. Form and sale of bonds.
35-128. Notice, hearing and creation of authority for a county.
35-129. Commissioners and powers of authority for a county.

35-103. (5309.3) **Definitions.** The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) to (18). * * * [Same as parent volume.]

(19) "Elderly families" shall mean families the head of which (or his spouse) is sixty (60) years of age or over and who otherwise qualify as "persons of low income" within the meaning of the definition set forth in (18) above.

History: En. Sec. 3, Ch. 140, L. 1935; amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1, Ch. 133, L. 1973.

Amendments

The 1973 amendment reduced the minimum age specified in subdivision (19) from 65 to 60 years.

35-115. (5309.15) **Form and sale of bonds.** The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty (60) years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten (10) days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of ———— or in the city of ————, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of

definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this act shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; amd. Sec. 37, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum payable semiannually" after "bear interest at such rate or rates" near the middle of the first paragraph; deleted the proviso to the second sentence of the second paragraph; and made a minor change in style.

35-128. (5309.27A) **Notice, hearing and creation of authority for a county.** (1) to (5) * * * [Same as parent volume.]

(6) The area of operation of such authority shall include said county, but in no event shall it include any city unless a resolution shall have been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city; provided, however, that such resolution shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. If, after the adoption of such resolution or resolutions, an authority is established for any city within the county, the county authority shall have no power to initiate any further housing projects within such city without the consent, by resolution, of the governing body thereof and of the authority established for such city.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

(7) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 153, L. 1941; amd. Sec. 1, Ch. 281, L. 1971.

Amendments

The 1971 amendment rewrote the first paragraph of subsection (6). For prior text, see parent volume.

35-129. (5309.27B) **Commissioners and powers of authority for a county.** The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities; provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "county clerk," the term "city" as used therein shall be construed as meaning "county" and the term "ordinance" shall be construed as meaning "resolution" unless a different meaning clearly appears from the context; and provided further, that the last paragraph of section 35-109 shall not be applicable to any action taken with respect to any housing project undertaken by a county housing authority outside the city limits.

History: En. Sec. 5, Ch. 153, L. 1941; amd. Sec. 2, Ch. 281, L. 1971.

Amendments

The 1971 amendment inserted "and the term 'ordinance' shall be construed as meaning 'resolution'" in the first proviso; added the second proviso; and made a minor change in punctuation.

Effective Date

Section 3 of Ch. 281, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

TITLE 36—HUSBAND AND WIFE

Chapter 2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 73; Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 299, distinguished in Hall v. United States, 266 FSupp 671.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 300.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

36-110. (5791) Married women may prosecute actions.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 73; Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 299, distinguished in Hall v. United States, 266 FSupp 671.

Removal of Common-law Disability

This section and section 36-128 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 300.

36-122. (5803) Rights of husband and wife, etc.

Divorce

This chapter is not controlling after dissolution of the marriage by divorce. Cook v. Cook, — M —, 495 P 2d 591.

36-128. (5809) May sue and be sued.

History Correction

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887, re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 73; Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 299, distinguished in Hall v. United States, 266 FSupp 671.

Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 300.

CHAPTER 2—CONCILIATION LAW

Section 36-201. Manner of citation.
36-202. Purposes—definitions—where applicable.
36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.
36-204. Procedure.
36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the "Montana Conciliation Law."

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court

during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "Article 8, Section 1" following "constitution of Montana" in subsection (8).

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of _____

Upon the petition of _____ Petitioner	Petition for Conciliation (Under the Conciliation Court Law)

And concerning
_____ and
_____
Respondents.

To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation

officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance.

The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) Stay of Divorce Proceedings—Where Conciliation Petition Filed First. Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage of the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) Jurisdiction Where No Minors Involved. Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 4, Ch. 238, L. 1963.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the constitution of the state of Montana, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963; amd. Sec. 17, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "Article 8, Section 1" following the reference to the constitution.

TITLE 37—INITIATIVE AND REFERENDUM

Chapter 1. State initiative and referendum, 37-101 to 37-105, 37-107 to 37-109.
2. Initiated constitutional amendments and conventions, 37-201 to 37-203.
3. County initiative and referendum, 37-301 to 37-311.

CHAPTER 1—STATE INITIATIVE AND REFERENDUM

Section 37-101. Form of petition for referendum.
37-102. Form of petition for initiative.
37-103. County clerk to verify signatures.
37-104. Notice to governor and proclamation.
37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot.
37-105. Certification and numbering of measures—constitutional amendments.
37-107. Printing and distribution of measures.
37-108. Canvass of votes.
37-109. Who may petition—false signature—penalties.

37-101. (99) **Form of petition for referendum.** The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Montana:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine of not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for referendum.

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned citizens and qualified electors of the state of Montana, respectfully order that Senate (House) Bill Number _____, entitled (title of act), passed by the _____ legislative assembly of the state of Montana, at the regular (special) session of said legislative assembly, shall be referred to the people of the state for their approval or rejection, at the regular, general, or special election to be held on the _____ day of _____, 19____, and each for himself says: I have personally signed this petition; I am a qualified elector of the state of Montana; and my residence, post-office address, legislative representative district number, and voting precinct are correctly written after my name.

Name _____ Residence _____
Post-office address _____
If in city, street and number _____
Legislative representative district number _____
Voting precinct _____

(Here follow numbered lines for signatures.)

History: En. Sec. 1, Ch. 62, L. 1907; Sec. 106, Rev. C. 1907; re-en. Sec. 99, R. C. M. 1921; amd. Sec. 1, Ch. 454, L. 1973.

Amendments

The 1973 amendment substituted "qualified elector" for "legal voter" in the "Warning" and "Petition for referendum"; and inserted provision for the legislative representative district number in the "Petition for referendum."

Contents of Petition

Statute prescribing form required for referendum petition was satisfied by petition stating ordinance number, title and date of session of city council at which ordinance was passed, even though full text of ordinance was not set forth in petition. Tod v. City of Billings, 149 M 462, 430 P 2d 620.

37-102. (100) **Form of petition for initiative.** The following shall be substantially the form of petition for any law of the state of Montana proposed by the initiative:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for Initiative.

To the Honorable _____, Secretary of State of the State of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully demand that the following proposed law shall be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the regular, general, or special election to be held on the _____ day of _____, 19____, and each for himself says:

I have personally signed this petition, and my residence, post-office address, legislative representative district, and voting precinct are correctly written after my name.

Name _____ Residence _____
Post-office address _____
If in city, street and number _____
Legislative representative district _____
Voting precinct _____

(Numbered lines for names on each sheet.)

Every such sheet for petitioner's signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but such petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions may be filed in sections in like manner.

History: En. Sec. 2, Ch. 62, L. 1907; Sec. 107, Rev. C. 1907; re-en. Sec. 100, R. C. M. 1921; amd. Sec. 2, Ch. 454, L. 1973.

Amendments

The 1973 amendment substituted references to qualified electors for references to legal voters in the "Warning" and "Petition for Initiative"; and inserted the provision for the legislative representative district in the Petition for Initiative.

37-103. (101) **County clerk to verify signatures.** The county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures his certificate to the secretary of state, substantially as follows:

State of Montana, County of _____

To the Honorable _____, Secretary of State for Montana:

I, _____, county clerk of the county of _____, hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition, attached hereto, with the signatures of said electors as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures in each whole or partial legislative representative district lying within the county boundaries), are genuine. As to the remainder of the signatures thereon, I believe that they are not genuine, for the reason that _____; and I further certify that _____ the following names (_____) do not appear on the registration books and blanks in my office.

Signed: _____

_____, County Clerk.

(Seal of Office) By _____

Deputy _____

Every such certificate shall be prima facie evidence of the facts stated therein, and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only such signatures on such petitions as shall be so certified by said county clerks to be genuine; provided, that the secretary of state may consider and count such of the remaining signatures as may be proved to be genuine, and that the parties so signing were legally qualified to sign such petitions, and the official certificate of a notary public of the county in which the signer resides shall be required as to the fact for each of such last-named signatures; and the secretary of state shall further compare and verify the official signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificate shall be substantially in the following form:

State of Montana, ss.

County of _____

I, _____, a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are qualified electors of the state of Montana, and of the county, legislative representative districts and precincts written after their several names in the annexed petition, and that their

residence and post-office address is correctly stated therein, to wit: (Names of such electors.)

In Testimony Whereof, I have hereunto set my hand and official seal this _____ day of _____, 19____

Notary Public, in and for _____ County,
State of Montana.

The county clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures, or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall forward the same to the secretary of state, with his certificate attached thereto, as above provided. The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

History: En. Sec. 3, Ch. 62, L. 1907; Sec. 108, Rev. C. 1907; re-en. Sec. 101, R. C. M. 1921; amd. Sec. 3, Ch. 454, L. 1973.

Amendments

The 1973 amendment inserted "in each whole or partial legislative representative district lying within the county boundaries" in the first sentence of the clerk's certificate; substituted "qualified electors" for "legal voters" in the notary's certificate; inserted "legislative representative districts" near the end of the notary's certificate; and made a minor change in style.

Sufficiency of Certification

City clerk's certification of petition for referendum presented on city ordinance simply identifying petition and stating "it has been determined that five per cent of the qualified electors have not signed" did not meet requirements of statute. Tod v. City of Billings, 149 M 462, 430 P 2d 620.

37-104. (102) **Notice to governor and proclamation.** Immediately upon the filing of any such petition for the referendum or the initiative with the secretary of state, signed by the number of electors and filed within the time required by the constitution, he shall notify the governor in writing of the filing of such petition, and the governor shall forthwith issue his proclamation, announcing that such petition has been filed, with a brief statement of its tenor and effect. Said proclamation shall be published four times for four consecutive weeks in one daily or weekly paper in each county of the state of Montana.

History: En. Sec. 4, Ch. 62, L. 1907; re-en. Sec. 109, Rev. C. 1907; re-en. Sec. 102, R. C. M. 1921; amd. Sec. 4, Ch. 454, L. 1973.

Amendments

The 1973 amendment substituted "electors" for "voters" in the middle of the first sentence.

37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 [23-3506] of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of

state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the legislative assembly and that it was signed by the governor. The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure, the statement of the secretary of state for referendum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963; amd. Sec. 1, Ch. 21, L. 1969.

Compiler's Notes

Section 23-1102, referred to in the first part of this section, was repealed by Sec. 248, Ch. 368, Laws 1969. For new law, see sec. 23-3506.

Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the vote of the people of the state of Montana and repealing all acts and parts of acts in conflict therewith.

Amendments

The 1969 amendment inserted the provision relating to the statement by the secretary of state for referendum measures.

Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

37-105. (103) **Certification and numbering of measures—constitutional amendments.** The secretary of state, at the same time that he furnishes to the county clerk of the several counties certified copies of the names of the candidates for office, shall also furnish the said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures. All measures shall be numbered with consecutive numbers beginning with the number immediately following that on the last measure filed in the office of the secretary of state. The affirmative and negative of each measure shall bear the same number, and no two measures shall be numbered alike. It shall be the duty of the several county clerks to print said titles and numbers on the official ballot prescribed by section 23-3506, in the numerical order in which the measures have been certified to them by the secretary of state. Measures proposed by the initiative shall be

designated and distinguished from measures proposed by the legislative assembly by the heading "proposed petition for initiative."

All constitutional amendments submitted to the qualified electors of the state shall likewise be placed upon the official ballot prescribed by said section 23-3506 and no such amendment shall hereafter be submitted on a separate ballot. Nothing herein contained shall be deemed to change the existing laws of the state regulating in other respects the manner of submitting such proposed amendments.

History: En. Sec. 5, Ch. 62, L. 1907; re-en. Sec. 110, Rev. C. 1907; amd. Sec. 1, Ch. 66, L. 1913; re-en. Sec. 103, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1927; amd. Sec. 5, Ch. 454, L. 1973.

Amendments

The 1973 amendment substituted references to section 23-3506 for references to former section 23-1102 in the third sentence of the first paragraph and the first sentence of the second paragraph.

37-107. (105) **Printing and distribution of measures.** The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people and make requisition on the state purchasing agent for the printing and delivery to him of all proposed constitutional amendments, initiative and referendum measures to be submitted to a vote of the people.

The state purchasing agent, shall, not later than the first Monday of the second month next before any general or special election, at which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. It shall be the duty of the state purchasing agent to call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when such proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each of the several counties in that form.

When the proposed measure constitutes more than six pages, said measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure, hereafter, to be submitted to the people of the state, as provided for in this section shall be bound. The quality of the paper to be used for the proposed measure shall be left to the discretion of the state purchasing agent. The number of said proposed measures to be printed shall be at least five per cent (5%) more than the number of qualified electors, as shown by the registration lists of the several counties of the state at the last preceding statewide election.

The secretary of state shall distribute to each county clerk before the second Monday in the second month next preceding the election at which the proposed measure(s) will be voted upon, a sufficient number of said pamphlets to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the state at least one copy of the same within thirty (30) days from the date of his receipt of the same from

the secretary of state. The mailing of said pamphlets to electors shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service.

History: En. Sec. 7, Ch. 62, L. 1907; Sec. 112, Rev. C. 1907; re-en. Sec. 105, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1927; amd. Sec. 2, Ch. 104, L. 1945; amd. Sec. 1, Ch. 67, L. 1947; amd. Sec. 6, Ch. 454, L. 1973.

Amendments

The 1973 amendment substituted "second month" for "third month" near the beginning of the second and last paragraphs; deleted the third and fourth sentences of the second paragraph, which distinguished between debt matters and others; inserted "at least" before "five per cent (5%)" in the fourth sentence of the fourth paragraph; substituted "qualified electors" for "registered voters" in the fourth sentence of the fourth paragraph; and substituted "the election at which the proposed measure(s) will be voted upon" for "such regular general election" in the first sentence of the last paragraph.

37-108. (106) **Canvass of votes.** The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided by section 23-4015 for abstracts of votes for state officers. It shall be the duty of the state board of canvassers to proceed within thirty (30) days after the election at which such measures are voted upon, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in effect the first day of July following its approval, unless the amendment provides otherwise, designating such measures by their titles.

History: En. Sec. 8, Ch. 62, L. 1907; Sec. 113, Rev. C. 1907; re-en. Sec. 106, R. C. M. 1921; amd. Sec. 1, Ch. 37, L. 1973; amd. Sec. 7, Ch. 454, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 37 and once by Ch. 454. Neither amendatory act mentioned the other. The two amendments appear to conflict with respect to the section references substituted for the former references to section 23-1812 and 23-1813; in this respect, the compiler has used the text of Chapter 454, the later in time of approval. Since the amendments do not otherwise appear to conflict, the compiler has made a composite section embodying the other changes made by both amendments.

Amendments

Chapter 37, Laws of 1973, substituted a reference to sections 23-3314 and 23-4015 near the end of the first sentence for a reference to former sections 23-1812 and 23-1813; deleted from the second sentence a requirement that the governor's proclamation be published "in two daily newspapers printed at the capital"; substituted July 1 following approval for the date of the proclamation as the effective date of approved measures; inserted "unless the amendment provides otherwise" near the end of the section; and made minor changes in phraseology and style.

Chapter 454, Laws of 1973, substituted the reference to section 23-4015 near the end of the first sentence for a reference to former sections 23-1812 and 23-1813; and inserted "at which such measures are voted upon" near the beginning of the second sentence.

37-109. (107) **Who may petition—false signature—penalties.** Each qualified elector of the state of Montana may sign a petition for the

referendum or for the initiative or for constitutional referendum or constitutional initiative. Any person signing any name other than his own to a petition, or signing one more than once for the same measure at one election, or who is not, at the time of signing a petition, a qualified elector of this state, or any officer or any person willfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars ($500), or by imprisonment in the penitentiary not exceeding two (2) years, or by both.

History: En. Sec. 9, Ch. 62, L. 1907; Sec. 114, Rev. C. 1907; re-en. Sec. 107, R. C. M. 1921; amd. Sec. 4, Ch. 35, L. 1973; amd. Sec. 8, Ch. 454, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 35 and once by Ch. 454. Neither amendatory act mentioned the other. Since the changes made by Ch. 35 included the change made by Ch. 454, the compiler has used the text of Ch. 35 above.

Amendments

Chapter 35, Laws of 1973, added references to the constitutional referendum and constitutional initiative at the end of the first sentence; substituted "qualified elector" for "legal voter" in the middle of the second sentence; deleted "in the discretion of the court before which such conviction shall be had" at the end of the section; and made numerous minor changes in phraseology and style.

Chapter 454, Laws of 1973, substituted "qualified elector" for "legal voter" in the middle of the second sentence.

Repealing Clause

Section 9 of Ch. 454, Laws 1973 read "Section 23-2701.1, R. C. M. 1947, is repealed."

CHAPTER 2—INITIATED CONSTITUTIONAL AMENDMENTS AND CONVENTIONS

Section 37-201. Form for people's initiative petition on the question of calling a constitutional convention.
37-202. Form for people's initiative petition for constitutional amendment.
37-203. Time for filing petitions.

37-201. Form for people's initiative petition on the question of calling a constitutional convention. The following shall be substantially the form for the people's initiative petition on the question of calling a constitutional convention:

WARNING

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two (2) years, or by both. (Section 37-109, Revised Codes of Montana, 1947)

PEOPLE'S INITIATIVE PETITION
ON THE QUESTION OF CALLING
A CONSTITUTIONAL CONVENTION

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the question of whether there shall be an unlimited convention to revise, alter, or amend the constitution be submitted to the qualified electors of the state of Montana for their approval

or rejection at the general election to be held on the _____ day of _____, 19____, and each qualified elector says for himself:

I have personally signed this petition, and my residence, post-office address, and voting precinct are correctly written after my name.

Name _____ Residence _____

Post-office address _____

If in city, street and number _____

Voting precinct _____ Representative Dist. No. _____

(Each sheet shall be in substantially the form above and contain numbered lines for names.)

History: En. 37-201 by Sec. 1, Ch. 35, L. 1973.

Title of Act

An act implementing article XIV, sections 2 and 9 of the 1972 Montana constitution concerning constitutional revision by providing two (2) forms of people's initiative petitions, time for filing petitions, and amending section 37-109, R. C. M. 1947.

37-202. Form for people's initiative petition for constitutional amendment. The following shall be substantially the form for people's initiative petition for constitutional amendment:

WARNING

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state, is punishable by a fine not exceeding five hundred dollars ($500), or imprisonment in the penitentiary not exceeding two (2) years, or by both. (Section 37-109, Revised Codes of Montana, 1947)

PEOPLE'S INITIATIVE PETITION
FOR CONSTITUTIONAL AMENDMENT

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the following proposed constitutional amendment shall be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the statewide election to be held on the _____ day of _____, 19____, and each qualified elector says for himself:

I have personally signed this petition, and my residence, post-office address, and voting precinct are correctly written after my name.

Name _____ Residence _____

Post-office address _____

If in city, street and number _____

Voting precinct _____ Representative Dist. No. _____

(Each sheet for petitioner's signature shall be in substantially the form above and contain numbered lines for names. A full and correct copy of the title and text of the proposed constitutional amendment shall be included in or attached to each sheet of the petition.)

History: En. 37-202 by Sec. 2, Ch. 35, L. 1973.

37-203. Time for filing petitions. Petitions in this chapter shall be filed with the secretary of state on or before one hundred twenty (120) days prior to the election at which they are to be voted upon by the people.

History: En. 37-203 by Sec. 3, Ch. 35, L. 1973.

CHAPTER 3—COUNTY INITIATIVE AND REFERENDUM

Section 37-301. Petition to initiate county resolution—adoption by board—submission to people—waiting period before re-enactment of resolution repealed by people.
37-302. Election at which initiative petition submitted.
37-303. Effective date of county commissioners' resolutions—appropriations—emergency measures.
37-304. Petition to refer commissioners' resolution to electors.
37-305. Election at which referred measure submitted—special election.
37-306. Special election ordered by commissioners—submission by commissioners at general election.
37-307. Issuance of proclamation—publication—posting.
37-308. Form of ballot—canvass of votes—proclamation of result.
37-309. Qualifications of electors.
37-310. Measures required to be submitted to electors.
37-311. Forms of petitions and proceedings.

37-301. Petition to initiate county resolution—adoption by board—submission to people—waiting period before re-enactment of resolution repealed by people. (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Petitions shall be filed with the county clerk. The county clerk shall present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission is filed under the provisions of this act.

(2) If the board does not, within sixty (60) days, pass the resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The procedure for judicial review shall be the same as that provided for the cities in section 11-1104 (4) and (5).

(3) If a resolution is repealed pursuant to a proposal initiated by the qualified electors of a county as provided in this act, the board of commissioners may not, within a period of two (2) years thereafter, re-enact

such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the board enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether the new resolution is a re-enactment without material change of the one so repealed. The same procedures set forth for cities shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of a resolution repealed pursuant to initiative of the voters.

History: En. Sec. 1, Ch. 64, L. 1973.

Title of Act

An act to extend the powers of initiative and referendum to Montana counties; implementing article XI, section 8 of the Montana constitution of 1972.

Cross-References

Initiative and referendum in cities, secs. 11-1104 to 11-1114.

37-302. Election at which initiative petition submitted. Any resolution proposed by petition which is entitled to be submitted to the people, shall be voted on at the next regular election to be held in the county, unless the petition asks that the same be submitted at a special election, and such petition is signed by not less than fifteen per cent (15%) of the electors qualified to vote at the last preceding county election.

History: En. Sec. 2, Ch. 64, L. 1973.

37-303. Effective date of county commissioners' resolutions—appropriations—emergency measures. No resolution passed by the board of county commissioners shall become effective until thirty (30) days after its passage, except general appropriation resolutions providing for the ordinary and current expenses of the county, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds (⅔) vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

History: En. Sec. 3, Ch. 64, L. 1973.

37-304. Petition to refer commissioners' resolution to electors. During the thirty (30) days following the passage of any resolution, ten per cent (10%) of the qualified electors of the county may, by petition addressed to the board and filed with the county clerk, demand that such resolution, or any part or parts thereof, shall be submitted to the electors of the county.

History: En. Sec. 4, Ch. 64, L. 1973.

37-305. Election at which referred measure submitted—special election. Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the county at the next county election provided the petition or petitions were filed with the county clerk at least thirty (30) days before such election. If such petition or petitions be signed by not less than fifteen per cent (15%) of

the qualified electors of the county, the measure shall be submitted at a special election to be held for the purpose.

History: En. Sec. 5, Ch. 64, L. 1973.

37-306. Special election ordered by commissioners—submission by commissioners at general election. The board of county commissioners may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any resolution passed by the board and may likewise submit to the electors, at a general election, any resolution passed by the board.

History: En. Sec. 6, Ch. 64, L. 1973.

37-307. Issuance of proclamation—publication—posting. Whenever a measure is ready for submission to the electors, the clerk of the county shall, in writing, notify the board, who shall issue a proclamation setting forth the measure and the date of the election. Said proclamation shall be published one (1) day each week for four (4) consecutive weeks in each daily newspaper in the county, if there be such, otherwise in the weekly newspaper published in the county. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the county.

History: En. Sec. 7, Ch. 64, L. 1973.

37-308. Form of ballot—canvass of votes—proclamation of result. The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the county shall be on separate sheets, and returned to the county clerk. The returns shall be canvassed in the same manner as the returns of regular elections for county and federal officers. The board shall issue a proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the county for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five (5) days after the vote is officially announced.

History: En. Sec. 8, Ch. 64, L. 1973.

37-309. Qualifications of electors. The qualifications for voting on questions submitted to the electors are the same as those required for voting for county commissioners.

History: En. Sec. 9, Ch. 64, L. 1973.

37-310. Measures required to be submitted to electors. The provisions of this act regarding the referendum shall not apply to resolutions which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any county.

History: En. Sec. 10, Ch. 64, L. 1973.

37-311. Forms of petitions and proceedings. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act.

History: **En. Sec. 11, Ch. 64, L. 1973.**

TITLE 38—INSANE AND FEEBLE-MINDED

Chapter 1. The Montana state hospital—management, 38-107 to 38-110, 38-119 to 38-121.
2. Examination of persons mentally deranged—commitment, 38-207, 38-210.
4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-406.1, 38-406.2.
5. Convalescent leave of patients, 38-502, 38-504, 38-505.
6. Eugenical sterilization law, Repealed—Section 1, Chapter 310, Laws of 1969.
7. Alcoholism services center, Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
8. Montana state training school and hospital, Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
10. State department of mental hygiene, Repealed—Section 101, Chapter 199, Laws of 1965.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

Section 38-107. Department may send patient to friends.
38-108. May contract with some other institution.
38-109. Discharge of patients.
38-110. Maintenance of indigent persons on discharge.
38-119. Insane person not indigent must be paid for.
38-120. Receipt of nonresident insane pending return to home state.
38-121. Terminology changed.

38-101, 38-102. (1413) Repealed.

Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963), relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Repealed.

Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch. 266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-107. (1418) Department may send patient to friends. The department of public institutions may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The board."

38-108. (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963; amd. Sec. 22, Ch. 266, L. 1963.

Compiler's Notes

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. Neither amendatory act mentioned the other. Since the changes made by Ch. 213 included the change made by Ch. 266, the compiler has used the text of Ch. 213 above.

Amendments

Chapter 213, Laws 1963, substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

38-109. (1421) Discharge of patients. The department of public institutions must cause to be discharged from the Montana state hospital any patient upon the written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963. Cal. Pol. C. Sec. 2189.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

Opinion Required

The written opinion of the hospital medical board and not that of a ward doctor is essential for the release of a patient. Petition of Smith, 145 M 567, 403 P 2d 604.

References

Petition of Kolocotronis, 145 M 564 402 P 2d 977.

38-110. Maintenance of indigent persons on discharge. Upon the discharge of any patient of the Montana state hospital, the department shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such patient is found to be in financial need the county board of public welfare shall properly care for and maintain the discharged patient under the provision of the Public Welfare Act until such patient is able to care for himself or other provision has been made for such care.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "in addition to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-118. (1429) Repealed.

Repeal

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons, was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Insane person not indigent must be paid for. None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907; re-en. Sec. 1430, R. C. M. 1921; amd. Sec. 25, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted a final clause which read, "and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

38-120. Receipt of nonresident insane pending return to home state. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963.

Title of Act

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

Repealing Clause

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

38-121. Terminology changed. Any reference to the terms "insane" person, "incompetent" person, a person with a "mental disease or defect," persons "disordered in mind," persons "unable to handle their own affairs," persons "feeble-minded, moron, imbecile, idiot and mentally deranged," and all other like references in the Revised Codes of Montana, 1947, mean "of unsound mind."

History: En. Sec. 1, Ch. 376, L. 1973.

Title of Act

An act implementing article II, section 28, article IV, sections 2 and 4, and article XII, section 3 (2) of the 1972 Montana constitution and H.B. 28 of this session providing the term "of unsound mind" to include other like terms in the Revised Codes of Montana, 1947.

CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED —COMMITMENT

Section 38-207. Forms of certificates.
38-210. Moneys of insane person—disposal of.

38-201. (1431) Examination before magistrate—affidavit, etc.

Fairness of Inquisition

Petitioner who was committed to state hospital was not deprived of his constitutional rights where it appeared that district judge and court attendants went to hospital to advise him of hearing date and

his privilege to have counsel, his mother was present at the hearing, which was held in the hospital, and everything was done by the court to see that petitioner's rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P 2d 977.

References

State v. Green, 143 M 234, 388 P 2d 362.

38-206. (1436) **Certificate of physicians.**

Disagreement by Physicians

Where medical jurors disagreed as to necessity of commitment of petitioner in mental institution, order of commitment issued by district court was void and of no effect. Application of Bushman, 153 M 422, 458 P 2d 81.

38-207. (1437) **Forms of certificates.** The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the state department of public institutions.

History: En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "board of the commissioners for the insane."

38-210. (1440) **Moneys of insane person—disposal of.** When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars ($100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars ($100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars ($50.00) shall be withdrawn from such account and placed in the agency fund in the state treasury, to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

38-214. (1444) Repealed.

Repeal

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1, Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO STATE TRAINING SCHOOL AT BOULDER

38-304. Repealed.

Repeal

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing persons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

Section 38-406.1. Voluntary admission for diagnosis and treatment of mental illness—definitions.
38-406.2. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment—right to release—costs of commitment proceedings—transportation costs.

38-406. Repealed.

Repeal

Section 38-406 (Sec. 6, Ch. 157, L. 1943; Sec. 1, Ch. 33, L. 1953), relating to the procedure for voluntary application for admission to state hospital for treatment of mental condition, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-406.1. Voluntary admission for diagnosis and treatment of mental illness—definitions. As used in this act unless the context indicates otherwise: (1) "Mental illness" means a psychiatric or other disease which substantially impairs mental health.

(2) "Patient" means a person admitted or committed to the Warm Springs state hospital for observation, diagnosis, care or treatment.

(3) "Prospective patient" means a person whose hospitalization is sought under the provisions of this act.

(4) "Hospital" means the Warm Springs state hospital.

(5) "Superintendent" means the superintendent of Warm Springs state hospital.

History: En. Sec. 1, Ch. 102, L. 1969.

Title of Act

An act to provide a procedure for voluntary admission to the Warm Springs state hospital which does not require approval of the district court judge; providing for a sixty-day compulsory period of detention authorizing earlier release or discharge; and providing that proceedings for judicial commitment need not be commenced unless there is a request in writing for the patient's release after the sixty-day compulsory detention; repealing section 38-406, R. C. M. 1947, and repealing section 38-410, R. C. M. 1947, which has been superseded by Title 80, chapter 16, R. C. M. 1947.

38-406.2. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment —

right to release—costs of commitment proceedings—transportation costs. (1) Subject to the availability of suitable accommodations, the superintendent shall admit to the hospital a person who is mentally ill or who has symptoms of mental illness for whom voluntary application is made in accordance with subsection (2) of this section.

(2) An application for voluntary admission to the hospital shall:

(a) Be on forms prescribed by the hospital and furnished by the hospital to the county attorney;

(b) Be signed before two witnesses by the prospective patient, or in the case of a minor, by his parent or guardian;

(c) Be certified by a licensed physician who has personally examined the prospective patient and believes he is mentally ill or has symptoms of mental illness or is in need of psychiatric evaluation and treatment; and

(d) Contain a statement by the prospective patient, or his parent or guardian that, unless earlier released on convalescent status or discharged, the prospective patient will remain in the hospital for diagnosis and treatment for at least sixty (60) days.

(3) If in the opinion of the superintendent detention of the patient for the entire sixty (60) day period is unnecessary, the superintendent may release or discharge the patient.

(4) Proceedings for judicial commitment shall not be commenced with respect to a person admitted on voluntary application unless after the sixty (60) day period of compulsory detention the patient requests his release in writing or whose release is requested in writing by his parent, guardian, spouse, or next of kin. Upon receipt of such a request, the patient shall be released within five (5) days after the request is received unless the superintendent files a petition with the district court of the third judicial district in the county of Deer Lodge certifying that in his opinion the release of the patient would be unsafe for the patient or others, or that the patient is in need of care and treatment in the hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.

(5) The superintendent of the hospital shall inform patients of their right to release as provided in this section.

(6) The costs of commitment proceedings under this section shall be paid by the county of the patient's residence. When the proceedings are completed, the clerk of the district court for the county of Deer Lodge shall send all papers relating to the proceedings to the clerk of the district court of the county of the patient's residence.

(7) The costs of transportation to the hospital under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence.

History: En. Sec. 2, Ch. 102, L. 1969.

Repealing Clause

Section 3 of Ch. 102, Laws 1969 read "Sections 38-406 and 38-410, R. C. M. 1947, are repealed."

38-407. Trial by jury, when.

Compiler's Notes

Section 38-406, referred to in the first sentence, was repealed by Sec. 3, Ch. 102, Laws of 1969. For present law, see sections 38-406.1 and 38-406.2.

38-408. Duty of clerk of district court.

Compiler's Notes

Section 38-406, referred to in this section, was repealed by Sec. 3, Ch. 102, Laws of 1969. For present law, see sections 38-406.1 and 38-406.2.

38-409. Repealed.

Repeal

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-410. Repealed.

Repeal

Section 38-410 (Sec. 1, Ch. 129, L. 1955), relating to the procedure for determining financial ability of applicant for admission to state hospital, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-411, 38-412. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.
38-504. Termination of convalescent leave.
38-505. Report by person under whom patient is placed on convalescent leave.

38-502. Convalescent leave of patients from Montana state hospital. The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state department of public institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state department of public institutions, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state department of public institutions, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state department of public institutions, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957; amd. Sec. 28, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" in three places for "state board of commissioners for the insane."

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state department of public institutions may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957; amd. Sec. 29, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of commissioners for the insane" near the end of the first sentence.

CHAPTER 6—EUGENICAL STERILIZATION LAW

(Repealed—Section 1, Chapter 310, Laws of 1969)

38-601 to 38-608. (1444.1 to 1444.8) Repealed.

Repeal

Sections 38-601 to 38-608 (Secs. 1 to 8, Ch. 164, L. 1923), known as the Eugenical Sterilization Law, were repealed by Sec. 1, Ch. 310, Laws 1969, effective March 11, 1969.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

(Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

38-701 to 38-711. (1445 to 1455) Repealed.

Repeal

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws 1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712 to 38-724. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism services center, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

38-801. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Repealed.

Repeal

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-803. Repealed.

Repeal

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804 to 38-807. Repealed.

Repeal

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superintendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-808, 38-809. Repealed.

Repeal

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1, Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.

Repeal

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-810, 38-811. Repealed.

Repeal

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-812. Repealed.

Repeal

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L. 1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-813 to 38-816. Repealed.

Repeal

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and transfer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-817, 38-818. Repealed.

Repeal

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-819. Repealed.

Repeal

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

(Repealed—Section 101, Chapter 199, Laws of 1965)

38-1001 to 38-1003. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establishing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

38-1101. Repealed.

Repeal

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1106. Repealed.

Repeal

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1108 to 38-1112. Repealed.

Repeal

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment, transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-135 to 39-139.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

Section 39-135. Validation of unacknowledged deeds executed before 1965.
39-136. Validation of unacknowledged deeds executed before 1967.
39-137. Validation of unacknowledged deeds executed before 1969.
39-138. Validation of unacknowledged deeds executed before 1971.
39-139. Validation of unacknowledged deeds executed before 1973.

39-135. Validation of unacknowledged deeds executed before 1965. All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 123, L. 1965.

Title of Act

An act validating deeds and conveyances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

39-136. Validation of unacknowledged deeds executed before 1967. All deeds to real property executed prior to January 1, 1967 in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 183, L. 1967.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1967 which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-137. Validation of unacknowledged deeds executed before 1969. All deeds to real property executed prior to January 1, 1969, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the

legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 77, L. 1969.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1969, which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-138. Validation of unacknowledged deeds executed before 1971. All deeds to real property executed prior to January 1, 1971, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 95, L. 1971.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1971, which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-139. Validation of unacknowledged deeds executed before 1973. All deeds to real property executed prior to January 1, 1973, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 82, L. 1973.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1973, which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

Chapter 27. The commissioner of insurance, 40-2709, 40-2716, 40-2717, 40-2726.
28. Authorization of insurers and general requirements, 40-2820 to 40-2822.
30. Assets and liabilities, 40-3011.
33. Agents, solicitors and adjusters, 40-3308 to 40-3311, 40-3313, 40-3314, 40-3321, 40-3327, 40-3328, 40-3332 to 40-3338.
35. Trade practices and frauds, 40-3506, 40-3512.
36. Rates and rating organizations, 40-3634 to 40-3669.
37. The insurance contract, 40-3729, 40-3738 to 40-3740.
38. Life insurance and annuities, 40-3802, 40-3831.
39. Group life insurance, 40-3905.1, 40-3906.
40. Disability insurance policies, 40-4002, 40-4002.1, 40-4035 to 40-4038.
41. Group and blanket disability insurance, 40-4101, 40-4102, 40-4108, 40-4109.
42. Credit life and disability insurance, 40-4203, 40-4211.
44. Casualty insurance contracts, 40-4402 to 40-4416.
47. Organization and corporate procedures of stock and mutual insurers, 40-4705, 40-4745, 40-4751 to 40-4758.
48. Farm mutual insurers, 40-4804, 40-4807.
49. Benevolent associations, 40-4917, 40-4918.
53. Fraternal benefit societies, 40-5321, 40-5324.
54. Extended health insurance for older persons, 40-5401 to 40-5408.
55. Insurance holding companies, 40-5501 to 40-5522.
56. Workmen's compensation insurance premium rates, 40-5601 to 40-5618.
57. Insurance guaranty association, 40-5701 to 40-5718.

CHAPTER 17—SURETY COMPANIES

40-1727. (6236) Repealed.

Repeal

This section (Sec. 3, Ch. 6, L. 1911; Sec. 1, Ch. 145, L. 1923; Sec. 1, Ch. 45, L. 1935; Sec. 19, Ch. 177, L. 1965), relating to the official bonds of county, city and township officers, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

CHAPTER 26—SCOPE OF CODE

40-2611. Exempted organizations, activities.

Compiler's Notes

Section 15-1401, referred to in this section in the parent volume, was repealed by Sec. 98, Ch. 198, Laws 1967.

40-2617. General penalty.

Applicability

Separate penalty section here provided is applicable to violation of section 40-4011 requiring prompt payment of claims. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

Section 40-2709. General powers, duties.
40-2716. Examination reports.
40-2717. Examination expense.
40-2726. Fees and licenses.

40-2709. General powers, duties. (1) to (3). * * * [Same as parent volume.]

(4) The commissioner may, after having conducted a hearing, pursuant to section 40-2720, impose a fine not to exceed the sum of five thousand dollars ($5,000) upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed five hundred dollars ($500). Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of section 40-2725.

(5) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969.

Amendments

The 1969 amendment inserted subsection (4) and redesignated former subsection (4) as subsection (5).

40-2712. Repealed.

Repeal

Section 40-2712 (Sec. 31, Ch. 286, L. 1959), relating to the commissioner's annual report, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see sections 82-4001 and 82-4002.

40-2716. Examination reports. (1) and (2). * * * [Same as parent volume.]

(3) Any director, officer, agent or employee of any company who destroys any books, records or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than one thousand dollars ($1,000), and, after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

(4) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(5) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(6) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(7) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967.

Amendments

The 1967 amendment inserted a new subsection (3) and redesignated former subsections (3) through (6) as present subsections (4) through (7).

40-2717. Examination expense. (1). * * * [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.]

History: En. Sec. 36, Ch. 286, L. 1959; amd. Sec. 72, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

40-2725. Appeals from the commissioner.

Compiler's Notes

Section 40-3633, referred to in subsection (8), was repealed by Sec. 37, Ch. 362, Laws of 1969. For a similar provision in current law, see section 40-3664.

40-2726. Fees and licenses. (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i). * * * [Same as parent volume.]

(ii) Annual continuation of certificate of authority 300.00

(iii). * * * [Same as parent volume.]

(b) to (m). * * * [Same as parent volume.]

(n) Policy forms:

(i) Filing each policy form 25.00

(ii) Filing each application, rider, endorsement, amendment, insert page, schedule or rates and clarification of risks 10.00

(iii) Maximum charge if policy and all forms submitted at one time, or resubmitted for approval within 180 days 50.00

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 45, Ch. 286, L. 1959; amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, Ch. 334, L. 1973.

Amendments

The 1969 amendment raised the fee for an annual continuation of certificate of authority provided in item (1)(a)(ii) from $25 to $300.

The 1973 amendment inserted subdivision (1)(n).

Compiler's Notes

Section 25-101 referred to in subsection (3), was repealed by Sec. 673, Ch. 286, Laws of 1959.

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 40-2820. Annual statement.
40-2821. Tax.
40-2822. Resident agent required—countersignature—records—exceptions.

40-2801. Certificate of authority required, etc.

Access to Courts

This section prohibits the transaction of insurance business without a certificate of authority from the commissioner but does not deny unauthorized companies access to the courts; a certificate of authority is not required to maintain and protect policies lawfully written in Montana. Empire Life Ins. Co. of America v. Sorenson, 347 F Supp 987.

40-2818. Commissioner attorney for service of process.

Venue of Action

Statute cannot be construed, for purpose of venue, under statute providing that actions be tried in county in which defendants reside, as giving a foreign insurance company residency in county of insurance commissioner, serving as agent of insurance company for service of process. Truck Ins. Exchange v. National Farmers Union Property & Cas. Co., 149 M 387, 427 P 2d 50.

40-2820. Annual statement. (1) to (3). * * * [Same as parent volume.]

(4) Any director, officer or agent or employee of any company who subscribes to, makes, or concurs in making, or publishing, any annual statement, or any other statement required by law, knowing the same to contain any material statement which is false shall be punished by a fine of not more than one thousand dollars ($1,000).

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 40-2726.

History: En. Sec. 65, Ch. 286, L. 1959; amd. Sec. 1, Ch. 27, L. 1967.

Amendments

The 1967 amendment added a new subsection (4) and redesignated former subsection (4) as present subsection (5).

40-2821. Tax. (1). * * * [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two and three-quarters per cent (2-3/4%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in section 40-2907, written in this state during the calendar year next preceding, and shall at the same time pay to the commissioner a tax of three-quarters of one per cent (¾ of 1%) of such gross underwriting profit.

(b) * * * [Same as parent volume.]

(4) to (7) * * * [Same as parent volume.]

(8) The provisions of this section shall apply to taxable years beginning after December 31, 1968.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971.

Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the proviso to the first paragraph of subsection (2).

The 1967 amendment substituted "1967 and 1968" for "1965 and 1966" in the proviso to the first paragraph of subsection (2).

The 1969 amendment, in subsection (2), substituted "1969 and 1970" for "1967 and 1968" and "two and three-quarters per cent (2¾%)" for "two and one-quarter per cent (2¼%)."

The 1971 amendment increased the tax rate set forth in the first paragraph of subsection (2) from 2% to 2¾%; deleted a former proviso to the first paragraph of subsection (2) reading, "provided that for each of the calendar years 1969 and 1970 the tax shall be computed at the rate of two and three-quarters per cent (2¾%) of such premiums"; substituted "December 31, 1968" for "December 31, 1960" in subsection (8); and made a minor change in style.

Effective Date

Section 2 of Ch. 237, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963.

Amendment

The 1963 amendment added clause (g) to subsection (3).

CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3011. Standard valuation law—life insurance.

40-3011. Standard valuation law—life insurance. (1). * * * [Same as parent volume.]

(2) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 40-3831 (the standard nonforfeiture law).

Except as otherwise provided in (3) (a) (vii) (A) of this section for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at three and one-half per cent (3½%) per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at three and one-half per cent (3½%) per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty (20) years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for life insurance under twenty (20) payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty (20) payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a twenty (20) payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law), except as otherwise provided in (3) (a) (vii) (A) of this section for group annuity and pure endowment contracts issued prior to such operative date.

(a) Except as otherwise provided in (3) (a) (vii) (A) of this section, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent (3½%) interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest, and the following tables:

(i). * * * [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vi). * * * [Same as parent volume.]

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(A) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on the effective date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation method defined in (3) (b) of this section and the following tables and interest rates:

(I) For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(II) For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of the table approved by the commissioner, and three and one-half per cent (3½%) interest.

(III) For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of the table approved by the commissioner, and six per cent (6%) interest.

(IV) For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and three and one-half per cent (3½%) interest.

After the effective date of this amendatory act of 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of the subsection (A) after a specified date before January 1, 1979, which shall be the operative date of the subparagraph for such insurer provided an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for

group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subparagraph for such insurer shall be January 1, 1979.

(b) and (c). * * * [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent (½%) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). * * * [Same as parent volume.]

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 341, L. 1973.

Compiler's Notes

The effective date of Ch. 341, Laws 1973, was March 17, 1973.

Amendments

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through clerical error, deleted from paragraph (3) (d) the words enclosed above in brackets.

The 1973 amendment inserted "except as otherwise provided in (3)(a)(vii)(A) of this section for group annuity and pure endowment contracts" at the beginning of the second paragraph of subsection (2) and at the end of the first paragraph in subsection (3); inserted "Except as otherwise provided in (3)(a)(vii)(A) of this section" to the beginning of subdivision (3)(a); inserted "or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest" near the end of the preliminary paragraph of subdivision (3)(a); inserted subdivision (3)(a)(vii)(A); and inserted the bracketed words in the proviso to subdivision (3)(d).

Effective Date

Section 2 of Ch. 41, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 33—AGENTS, SOLICITORS AND ADJUSTERS

Section 40-3308. General qualifications, resident agents and solicitors—other than life insurance agents.
40-3309. General qualification for license as life or disability insurance agent.
40-3310. Licensing of firms and corporations.
40-3311. Licensing of resident agents' association.
40-3313. Examination.
40-3314. Conduct of examinations.
40-3321. Special requirements as to solicitors.
40-3327. Adjuster's license—qualifications—catastrophe adjustments.
40-3328. Continuance, expiration of licenses.

40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.
40-3333. Nonresident agent may be licensed—reciprocity.
40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement.
40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence.
40-3336. Limitations as to coverage.
40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process.
40-3338. Nonresident agent subject to provisions of the Montana Insurance Code.

40-3308. General qualifications, resident agents and solicitors—other than life insurance agents. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) Must be eighteen (18) years of age or more, or, if for a solicitor's license, must be at least eighteen (18) years of age.

(b) Must be a resident in and of this state.

(c) If for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.

(d) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation.

(e) to (h). * * * [Same as parent volume.]

(2) In determining the qualifications as to competence, training, experience and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

The 1971 amendment reduced the age specified near the beginning of subdivision (1)(a) from 21 to 18 years.

40-3309. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

(1). * * * [Same as parent volume.]

(2) Must be a resident in and of this state; or of another state, if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969.

Amendments

The 1969 amendment omitted the second sentence of subsection (2) which designated the commissioner as attorney-in-fact of any nonresident agent for acceptance of service of process.

40-3310. Licensing of firms and corporations. (1). * * * [Same as parent volume.]

(2) A nonresident of Montana shall not be named in such license and shall not have the right to exercise the license powers.

(3) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state, and unless the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(4) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted subsection (2) and redesignated former subsections (2) and (3) as subsections (3) and (4).

40-3311. Licensing of resident agents' association. (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability, any association of licensed Montana insurance agents, whether or not incorporated, and formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests and risks of the state of Montana and of other public agencies, bodies and institutions, and to receive the customary commission thereon.

(3). * * * [Same as parent volume.]

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association, and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only (and without notice to the individual officers or members of the association), revoke the license if he finds that continuation thereof is not in the public interest, or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

History: En. Sec. 155, Ch. 286, L. 1959; amd. Sec. 10, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3313. Examination. (1) to (4). * * * [Same as parent volume.]

(5) This section shall not apply to, and no such examination shall be required of:

(a) and (b). * * * [Same as parent volume.]

(c) Any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code.

(d) to (g). * * * [Same as parent volume.]

History: En. Sec. 157, Ch. 286, L. 1959; amd. Sec. 11, Ch. 44, L. 1969.

Amendments

The 1969 amendment rewrote subdivision (5)(c) which provided exemption from examination for "Nonresident applicants for license as life insurance agents."

40-3314. Conduct of examinations. (1) The commissioner shall make any examination required under section 40-3313 available to applicants with reasonable frequency, and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion, but at least once a month.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 158, Ch. 286, L. 1959; amd. Sec. 1, Ch. 156, L. 1969.

Amendments

The 1969 amendment substituted "at times within his discretion, but at least once a month" for "on each business day" at the end of subsection (1).

Effective Date

Section 2 of Ch. 156, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

40-3321. Special requirements as to solicitors. (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed; except, that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or countersign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

History: En. Sec. 165, Ch. 286, L. 1959; amd. Sec. 12, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3327. Adjuster's license—qualifications—catastrophe adjustments. (1) * * * [Same as parent volume.]

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

(a) Must be an individual eighteen (18) years of age or more.

(b) to (e) * * * [Same as parent volume.]

(3) and (4) * * * [Same as parent volume.]

History: En. Sec. 171, Ch. 286, L. 1959; amd. Sec. 6, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivision (2)(a) from 21 to 18 years.

40-3328. Continuance, expiration of licenses. (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked or terminated, but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in section 40-2726, accompanied by written request for such continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only, shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in section 40-2726. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 40-3317 (5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 172, Ch. 286, L. 1959; amd. Sec. 13, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "all nonresident agent licensees" in the first sentence of subsection (1).

40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster, without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and fined five hundred dollars ($500) or imprisoned in the county jail for ninety (90) days, or both such fine and imprisonment.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967.

Title of Act

An act to provide a penalty for operating without a license as an insurance agent, solicitor, or adjuster.

40-3333. Nonresident agent may be licensed—reciprocity. The commissioner may license as an agent a person who is otherwise qualified under this code but who is not a resident of this state, if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

History: En. Sec. 1, Ch. 44, L. 1969.

Title of Act

An act to provide for licensing nonresident insurance agents domiciled in states which grant reciprocal privileges to Montana agents; amending sections 40-3308 through 40-3311, 40-3313, 40-3321 and 40-3328, R. C. M. 1947, to ensure that such sections apply to resident agents only.

40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement. A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

History: En. Sec. 2, Ch. 44, L. 1969.

40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence. An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

History: En. Sec. 3, Ch. 44, L. 1969.

40-3336. Limitations as to coverage. A nonresident agent shall not sign nor countersign policies covering subjects of insurance located or to be performed in Montana. These policies must be countersigned by a licensed resident agent.

History: En. Sec. 4, Ch. 44, L. 1969.

40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney in fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of five dollars ($5). The commissioner shall then promptly forward a copy of the service by registered mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee.

History: En. Sec. 5, Ch. 44, L. 1969.

40-3338. Nonresident agent subject to provisions of the Montana Insurance Code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969.

CHAPTER 35—TRADE PRACTICES AND FRAUDS

Section 40-3506. False financial statements.
40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances.

40-3501. Purposes of trade practice law.

Claims Administration

This chapter was never intended to regulate the investigation, settlement, and negotiation of automobile insurance claims. State ex rel. Cashen v. District Court, 157 M 40, 482 P 2d 567.

40-3506. False financial statements. (1). * * * [Same as parent volume.]

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, and any person who aids or abets in any such violation of this section shall be punishable, upon conviction, by a fine of one thousand dollars ($1,000) or by imprisonment in the county jail for six (6) months, or both such fine and imprisonment.

History: En. Sec. 208, Ch. 268, L. 1959; amd. Sec. 1, Ch. 29, L. 1967.

Amendments

The 1967 amendment added "and any person who aids or abets * * * or both such fine and imprisonment" at the end of the section.

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances. (1) and (2). * * * [Same as parent volume.]

(3) No such insurer shall make or permit any unfair discrimination either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

(4). * * * [Same as parent volume.]

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969.

Amendments

The 1969 amendment inserted "either" after "unfair discrimination" and "or between insureds because of race, color, creed, or national origin," after "risk characteristics" in subsection (3).

CHAPTER 36—RATES AND RATING ORGANIZATIONS

Section 40-3634. Purpose and intent of chapter.
40-3635. "Rating organization" defined.
40-3636. "Advisory organization" defined.
40-3637. "Member" and "subscriber" defined.
40-3638. "Willful" and "willfully" defined.
40-3639. Scope of chapter.
40-3640. Standards applicable to rates.
40-3641. Insurers authorized to act in concert.
40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds.
40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.
40-3644. Exchange of information or experience data—consultation with rating organizations and insurers.
40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval.
40-3646. Joint underwriters and reinsurers.
40-3647. Rating organizations.
40-3648. Evidence prerequisite to license.
40-3649. Examination of application and investigation of applicant—issuance of license—fee.
40-3650. Rules governing eligibility for membership.
40-3651. Insurers with common ownership or management.
40-3652. Advisory organizations.
40-3653. Joint underwriting and joint reinsurance.
40-3654. Maintenance of records—necessity—contents—compliance with section—place of maintenance.
40-3655. Records and examination.
40-3656. Examination of admitted insurers.
40-3657. Examination of officers, managers, agents and employees.
40-3658. Payment of cost of examination.
40-3659. Review of rates.
40-3660. Noncompliance of rates.
40-3661. Hearings.
40-3662. Issuance of order—suspension or revocation of certificate of authority or license.
40-3663. Failure to comply with order—suspension or revocation of license or certificate.
40-3664. Appeals from the commissioner.
40-3665. Information not to be willfully withheld.
40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system.
40-3667. Acts, etc., done by authority of chapter not violation of other laws.
40-3668. Administration or enforcement of chapter—supplementation or modification.
40-3669. Recording and reporting of loss and expense experience.

40-3601 to 40-3633. Repealed.

Repeal

Sections 40-3601 to 40-3633 (Secs. 225 to 257, Ch. 286, L. 1959), relating to the regulation of insurance rates, were repealed by Sec. 37, Ch. 362, Laws 1969.

40-3634. Purpose and intent of chapter. The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize co-operation between insurers in rate-making and other related matters.

It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969.

Title of Act

An act to provide for regulation of insurance rates and rating organizations, advisory organizations and joint underwriting and joint reinsurance; and repealing sections 40-3601 through 40-3633, R. C. M. 1947.

40-3635. "Rating organization" defined. In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in sections 9, 11, 12, 20 and 21 [40-3642, 40-3644, 40-3645, 40-3653 and 40-3654] shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

History: En. Sec. 2, Ch. 362, L. 1969.

40-3636. "Advisory organization" defined. In this chapter "advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

History: En. Sec. 3, Ch. 362, L. 1969.

40-3637. "Member" and "subscriber" defined. Unless otherwise apparent from the context, in this chapter:

(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member; or (2) with advisory services by an advisory organization of which it is not a member.

History: En. Sec. 4, Ch. 362, L. 1969.

40-3638. "Willful" and "willfully" defined. In this chapter "willful" or "willfully," in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: En. Sec. 5, Ch. 362, L. 1969.

40-3639. Scope of chapter. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

(1) Life insurance.

(2) Disability insurance.

(3) Reinsurance, except joint reinsurance as provided in section 20 [40-3653] of this chapter.

(4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.

(5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(6) Title insurance.

(7) Workmen's compensation or employers' liability insurance written in connection with workmen's compensation.

History: En. Sec. 6, Ch. 362, L. 1969.

40-3640. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is three (3) years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 54 and once by Ch. 104. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 54, Laws of 1973, added "except that no special risk classification may be established on anything adverse to the insured in a driving record which is three (3) years old or older" at the end of the fourth sentence of subdivision (d).

Chapter 104, Laws of 1973, inserted "to revenues and profits from reserves," near the beginning of subdivision (b).

40-3641. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting

rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969.

40-3642. Admitted insurers with common ownership or management —matters relating to cosurety bonds. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969.

40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto. Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in sections 9, 12, 20 and 21 [40-3642, 40-3645, 40-3653 and 40-3654], shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: En. Sec. 10, Ch. 362, L. 1969.

40-3644. Exchange of information or experience data—consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969.

40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval. (a) Agreements may be made among admitted insurers

with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(b) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter, and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than ten (10) days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. For good cause, and after hearing upon not less than ten (10) days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: En. Sec. 12, Ch. 362, L. 1969.

40-3646. Joint underwriters and reinsurers. Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

History: En. Sec. 13, Ch. 362, L. 1969.

40-3647. Rating organizations. No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for, and securing a license to act as, a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, all duly certified by the custodian or the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom

notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969.

40-3648. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of section 21 [40-3654].

History: En. Sec. 15, Ch. 362, L. 1969.

40-3649. Examination of application and investigation of applicant—issuance of license—fee. The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be one hundred dollars ($100) annually which shall be deposited in the general fund.

History: En. Sec. 16, Ch. 362, L. 1969; amd. Sec. 1, Ch. 206, L. 1973.

Amendments

The 1973 amendment added the second sentence to the final paragraph.

40-3650. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969.

40-3651. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969.

40-3652. Advisory organizations. No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof; (b) a list of its members and subscribers; and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969.

40-3653. Joint underwriting and joint reinsurance. Every group, association or other organization of insurers which engages in joint un-

derwriting or joint reinsurance through such group, association or organization, or by standing agreement among the members thereof, shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 20, Ch. 362, L. 1969.

40-3654. Maintenance of records — necessity — contents — compliance with section—place of maintenance. Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: En. Sec. 21, Ch. 362, L. 1969.

40-3655. Records and examination. The commissioner shall, at least once every five (5) years, and may as often as may be reasonable and necessary, make or cause to be made, an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory

organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section, the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

History: En. Sec. 22, Ch. 362, L. 1969.

40-3656. Examination of admitted insurers. The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

History: En. Sec. 23, Ch. 362, L. 1969.

40-3657. Examination of officers, managers, agents and employees. The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

History: En. Sec. 24, Ch. 362, L. 1969.

40-3658. Payment of cost of examination. The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

History: En. Sec. 25, Ch. 362, L. 1969.

40-3659. Review of rates. Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule followed or adopted by an insurer or rating organization, may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty (30) days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the

commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in section 27 [40-3660].

History: En. Sec. 26, Ch. 362, L. 1969.

40-3660. Noncompliance of rates. If, after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in section 26 [40-3659], the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under section 28 [40-3661].

History: En. Sec. 27, Ch. 362, L. 1969.

40-3661. Hearings. If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by section 27 [40-3660], the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner, or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten (10) days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. If no notice has been given as provided in section 27 [40-3660], such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by section 27 [40-3660] or this section.

History: En. Sec. 28, Ch. 362, L. 1969.

40-3662. Issuance of order—suspension or revocation of certificate of authority or license. If, after a hearing pursuant to section 28 [40-3661], the commissioner finds:

(a) That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) That any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969.

40-3663. Failure to comply with order—suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to section 29 [40-3662] and effective pursuant to section 31 [40-3664].

History: En. Sec. 30, Ch. 362, L. 1969.

40-3664. Appeals from the commissioner. Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark county, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of

the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969.

40-3665. Information not to be willfully withheld. (a) No person, insurer or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(b) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty dollars ($50), but if such failure be willful, he or it shall be liable to the state in an amount not exceeding five thousand dollars ($5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(c) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969.

40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

History: En. Sec. 33, Ch. 362, L. 1969.

40-3667. Acts, etc., done by authority of chapter not violation of other laws. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this

state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969.

40-3668. Administration or enforcement of chapter—supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969.

40-3669. Recording and reporting of loss and expense experience. (a) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and country-wide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this act. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience.

(b) In promulgating such rules and plans the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(c) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969.

Repealing Clause

Section 37 of Ch. 362, Laws 1969 read "Sections 40-3601 through 40-3633, R. C. M. 1947, are hereby repealed."

CHAPTER 37—THE INSURANCE CONTRACT

Section 40-3729. Assignment of policies.
40-3738. Continuation of coverage for handicapped—individual contracts.
40-3739. Continuation of coverage for handicapped—group contracts.
40-3740. Equal application notwithstanding contrary exemption or law.

40-3713. Representations in applications.

Misstatements Material to Acceptance

Where application for automobile insurance contained nonfraudulent misstatements as to driving history on one insured which were material to acceptance of risk and hazard assumed by plaintiff, and insurer's agent received both letter from insurer rejecting application and notice of accident involving automobile to be insured on same day, insurer was not liable. American Indemnity Co. v. Elespuru, 302 FSupp 878.

Waiver of Misrepresentation

Motorist injured by negligence of insured was entitled to recover under insured's policy, even though insurance company was entitled to rescind policy for violation of this statute since insurance policy was effective until rescinded and since subsequent to discovering insured's fraud, insurance company acted affirmatively in accepting premium payments and paying other claims arising out of same accident all of which constituted implied waiver of right to rescind. McLane v. Farmers Ins. Exchange, 150 M 116, 432 P 2d 98.

40-3725. Construction of policies.

Construction against Insurer

A policy of insurance must be liberally construed in favor of the insured, and strictly construed against the insurer. Insurance Co. of North America v. Butte Aero Sales & Service, 243 F Supp 276.

Endorsement on insurance policy limiting aircraft insurance to named person and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. Insurance Co. of North America v. Butte Aero Sales & Service, 243 F Supp 276, distinguished in 429 F 2d 896, 898.

Crop Insurance

Crop-hail insurance policy, which required information pertaining to acreage of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage," read in light of the entire policy, pertained to loss or damage representing the percentage of injury to the crop, and not the value of the crop. Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

40-3729. Assignment of policies. A policy, or group certificate issued thereunder, may be assignable or not assignable, as provided by its terms. Subject to its terms relating to the assignability, any life or disability policy, or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including, but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with sections 40-3918 and 40-3919. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prej-

udiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment. This section acknowledges, declares and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to the effective date of this section.

History: En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971.

Amendments

The 1971 amendment inserted references to group certificates in the first and second sentences; inserted "or owner" following "insured" in two places in the second sentence; inserted the third sentence; added the proviso to the fourth sentence; and added the final two sentences.

40-3733. Claims administration not waiver.

Waiver of Defects in Proof of Loss

Insurer's receipt and retention for 60 days of statement of loss due to fire constituted waiver of defense that insured failed to provide adequate proof of loss. Staggers v. United States Fidelity & Guaranty Co., — M —, 496 P 2d 1161.

40-3738. Continuation of coverage for handicapped—individual contracts. An individual hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3738 by Sec. 1, Ch. 298, L. 1971.

Title of Act

An act to provide for the continuation of coverage under individual and group health insurance and hospital and medical service plan contracts for mentally retarded or physically handicapped dependent children; amending chapter 37, Title 40, R. C. M. 1947.

40-3739. Continuation of coverage for handicapped—group contracts. A group hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and

continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation, by the employee or member within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3739 by Sec. 1, Ch. 298, L. 1971.

40-3740. Equal application notwithstanding contrary exemption or law. The provisions of this act shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: En. Sec. 2, Ch. 298, L. 1971.

CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3802. "Industrial life insurance" defined.
40-3831. Standard nonforfeiture law—life insurance.

40-3802. "Industrial life insurance" defined. For the purposes of this code "industrial life insurance" is that form of life insurance written under policies of face amount of two thousand dollars ($2,000) or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969.

Amendments

The 1969 amendment raised the limit for policies from $1,000 to $2,000.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3). * * * [Same as parent volume.]

(4) Cash surrender value—life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, ot the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). * * * [Same as parent volume.]

(5) to (7). * * * [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be

equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a) In the case of ordinary policies issued on or after the operative date of this subsection (8-a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioners 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1958 extended term insurance table. Provided, further, that

for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-a), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-six.

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up

term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). * * * [Same as parent volume.]

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973.

Amendments

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9), and (10); and made minor changes in punctuation in subsections (7-a) and (8).

The 1973 amendment inserted "except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986" in the first sentences of subsections (8-a) and (8-b); and made minor changes in phraseology.

Effective Dates

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

Section 3 of Ch. 341, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.
40-3906. Debtor groups.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds (⅔) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

Title of Act

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

Effective Date

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

40-3906. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). * * * [Same as parent volume.]

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

Amendment

The 1965 amendment deleted "or ten thousand dollars ($10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five years" for "eighteen months" in the second sentence of subsection (4).

Repealing Clause

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 40—DISABILITY INSURANCE POLICIES

Section 40-4002. Scope, format of policy.
40-4002.1. Coverage of newborn under family policy.
40-4035. Health insurance coverage of services of state institutions.
40-4036. Locus of purchase.
40-4037. Exclusion of state institution services void.
40-4038. Rate of payment for state institution services.

40-4002. Scope, format of policy. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) to (3). * * * [Same as parent volume.]

(4) No policy or certificate of insurance, which in addition to covering the insured, also covers members of the insured's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth;

(5) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 40-4004 to 40-4026, inclusive, of this chapter, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

History: En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973.

Amendments

The 1973 amendment inserted a new subsection (4); and renumbered former subsections (4), (5), (6) and (7) as subsections (5), (6), (7) and (8), respectively.

40-4002.1. Coverage of newborn under family policy. Each policy of disability insurance or certificate issued thereunder, which in addition to

covering the insured, also covers members of the insured's family shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

History: En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973.

Title of Act

An act providing that disability insurance policies and plans covering members of the insured's family as well as the insured shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured; and amending sections 40-4002, 40-4101 and 40-4102.

40-4011. Time of payment of claims.

Criminal Penalty

Separate penalty provided in section 40-2617 is applicable to violation of this section where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

Exemplary Damages

Insured was entitled to actual damages for default on policy requiring insurer to pay car installments upon insured's disability as well as to exemplary damages for default as being in violation of statute requiring prompt payment of claim where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

40-4034. Violations.

Prompt Payment of Claims

Separate penalty provided in section 40-2617 is applicable to violation of section 40-4011 where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

40-4035. Health insurance coverage of services of state institutions. From and after the effective date of this act, it shall be unlawful for any insurance company or health service corporation issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution; provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution.

History: En. Sec. 1, Ch. 50, L. 1973.

Title of Act

An act prohibiting insurance companies issuing disability insurance policies in Montana from excluding therefrom coverage for services rendered an insured while a resident of a Montana state institution, if such services would have been covered if rendered to an insured outside such institution; defining "issued in Montana"; providing that such exclusion, if appearing in a disability insurance policy issued in Montana after the effective date of this act, is void; providing for rate of payment; and providing an effective date.

40-4036. Locus of purchase. A disability insurance policy shall be deemed to be "issued in Montana" if the insured purchasing such disability insurance policy is, at the time of such purchase, residing in the state of Montana.

History: En. Sec. 2, Ch. 50, L. 1973.

40-4037. Exclusion of state institution services void. If the exclusion, prohibited by this act, should appear in a disability insurance policy issued in Montana after the effective date of this act, such provision shall be

deemed void and such disability insurance policy will be deemed to cover services rendered the insured in a Montana state institution if such services would have been covered if rendered to an insured outside of a Montana state institution.

History: En. Sec. 3, Ch. 50, L. 1973.

40-4038. Rate of payment for state institution services. Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of such disability policy, which would be paid for such services if rendered outside a Montana state institution.

History: En. Sec. 4, Ch. 50, L. 1973.

Effective Date

Section 5 of Ch. 50, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 14, 1973.

CHAPTER 41—GROUP AND BLANKET DISABILITY INSURANCE

Section 40-4101. "Group disability insurance" defined—eligible groups.
40-4102. Required provisions of group policies.
40-4108. Policies to provide for freedom of choice of practitioners.
40-4109. Scope of professional practice not enlarged—hospitals.

40-4101. "Group disability insurance" defined—eligible groups. Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon the following basis:

(1) to (6). * * * [Same as parent volume.]

(7) No group disability policy or certificate of insurance, which, in addition to covering persons in the insured group, also covers members of such person's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973.

Amendments

The 1973 amendment added subsection (7).

40-4102. Required provisions of group policies. Each such group disability insurance policy shall contain in substance the following provisions:

(1) to (3). * * * [Same as parent volume.]

If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group.

History: En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973.

Amendments

The 1973 amendment added the final paragraph following subsection (3).

40-4108. Policies to provide for freedom of choice of practitioners. All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the Workmen's Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

History: En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971.

Title of Act

An act requiring disability insurance and workmen's compensation policies to provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist or chiropodist for treatment of illness or injury; providing a like freedom of choice in the selection of pharmacists; providing an effective date; and containing a repealing clause.

Amendments

The 1971 amendment inserted "or clinical psychologist."

40-4109. Scope of professional practice not enlarged—hospitals. Nothing in this act shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in section 1 [40-4108]; nor shall this act be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: En. Sec. 2, Ch. 172, L. 1967.

Repealing Clause

Section 4 of Ch. 172, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 172, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

CHAPTER 42—CREDIT LIFE AND DISABILITY INSURANCE

Section 40-4203. Scope of chapter.
40-4211. Premiums and refunds.

40-4203. Scope of chapter. All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years duration.

History: En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969.

Amendments

The 1969 amendment increased the time period of exempt transactions from five years to ten years.

40-4211. Premiums and refunds. (1) to (3). * * * [Same as parent volume.]

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967.

Amendments

The 1967 amendment added subsection (4) to this section.

CHAPTER 43—PROPERTY INSURANCE CONTRACTS

40-4301. Measure of the indemnity.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4302. Valued policy law.

Future Improvements

When both parties to a fire insurance policy intend that policy cover property plus added value of work on building to be done subsequently, the policy is "open" or "unvalued," not "valued." Century Corp. v. Phoenix of Hartford, 157 M 16, 482 P 2d 1020.

Improvements on Real Property

Mobile home that rested on permanent foundation with its wheels removed, had two additional rooms bolted to it and was connected with sewer line was an "improvement on real property" as used in this section. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

A trailer house set up for occupancy and connected to a cesspool, a light plant and oil and propane tanks, was an improvement on real property within the meaning of this section. Staggers v. United States Fidelity & Guaranty Co., — M —, 496 P 2d 1161.

Partial Payment

Where valued policy fixed valuation of mobile home at $3,000, insured who signed proof of loss calling for payment of $1,500 by the insurer and subsequently accepted check in that amount was not barred from claiming additional $1,500 since claim was a liquidated demand that was not settled by partial payment. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

Total Loss

Mobile home was wholly destroyed under this section even though some articles were salvaged and frame could be used as farm or ranch trailer, since mobile home's identity and specific character were lost. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.
40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.
40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value.
40-4405. Notice required for cancellation of auto liability insurance.
40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance.
40-4407. Reasons for cancellation.
40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request.
40-4409. Advance notice required for nonrenewal—exceptions—exemptions.
40-4410. Proof of notice.
40-4411. Penalty for violation.
40-4412. No liability for statements in connection with cancellation or nonrenewal.
40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited.
40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required.
40-4415. Written notice required for cancellation or nonrenewal of fire insurance policies.
40-4416. Penalty for cancellation or nonrenewal of fire insurance policies without required notice.

40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any

premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Cross-References

Sovereign immunity abolished effective July 1, 1973, 1972 Const., art. II, § 18.

Excessive Liability

If the amount of liability exceeds the amount of insurance, the policy should be delivered by the claimant to the district judge who will apply the limitation requirement of this section. Boettger v. Employers Liability Assurance Corp., 158 M 258, 490 P 2d 717.

Parties to Action

In cause of action by administratrix of estate of person allegedly shot in the back by policeman in a negligent, reckless, deliberate, and willful manner, the city was not a proper party. The liability of the police officers in tort must first be determined. If liability is established and insurance exists, then the insurer becomes liable under the policy; should liability be denied, a suit is required and both the insured and insurer would be proper parties. Boettger v. Employers Liability Assurance Corp., 158 M 258, 490 P 2d 717.

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 53-422, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided further,

that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967.

Title of Act

An act relating to automobile liability insurance policies; requiring such policies to contain uninsured motorist provision; permitting rejection of such coverage at the option of the insured; providing for an effective date.

Effective Date

Section 2 of Ch. 31, Laws 1967 read "This act is effective January 1, 1968."

Recovery from Primary Insurer

Recovery from primary insurer under uninsured motorist coverage, though applied against the total judgment, does not reduce the amount of coverage provided by secondary insurer. Sullivan v. Doe, — M —, 495 P 2d 193.

Workmen's Compensation

Since uninsured motorist coverage is intended to place the injured policyholder in the same position he would have been if the uninsured motorist had liability insurance, the amount of plaintiff's recovery from uninsured motorist coverage cannot be reduced by any workmen's compensation benefits received by him, and the insurance commissioner had no authority to approve a policy providing for such reduction. Sullivan v. Doe, — M —, 495 P 2d 193.

40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value. Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision and reimbursement shall be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969.

Title of Act

An act to provide that motor vehicle insurance must provide that reimbursement for a total loss of the vehicle be based on the actual replacement value of the vehicle and not on a book value.

40-4405. Notice required for cancellation of auto liability insurance. Notwithstanding any other provision of this code, no cancellation by an insurer of an auto liability insurance policy shall be effective prior to the mailing or delivery to the named insured at the address shown in the policy, of a written notice of the cancellation stating when, not less than thirty (30) days after the date of such mailing or delivery, the date the cancellation shall become effective.

History: En. Sec. 1, Ch. 262, L. 1971.

Title of Act

An act to establish a law concerning cancellation of automobile liability insurance policies.

40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of an automobile liability policy, upon request of the insured, the insurer, within fifteen (15) days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971.

40-4407. Reasons for cancellation. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) Nonpayment of premium; or

(b) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

History: En. Sec. 3, Ch. 262, L. 1971.

40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request. No notice of cancellation of a policy to which section 3 [40-4407] applies shall be effective unless mailed or delivered by the insurer to the named insured at least thirty (30) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

This section shall not apply to nonrenewal.

History: En. Sec. 4, Ch. 262, L. 1971.

40-4409. Advance notice required for nonrenewal—exceptions—exemptions. No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least thirty (30) days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than one (1) month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within fifteen (15) days of his request, the reason or reasons for such nonrenewal; provided, however, that notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies. This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums

for the policy, or the renewal thereof, or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. This section shall not apply in any of the following cases:

(a) If the insurer has manifested its willingness to renew.

(b) In case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) If the insured's agent or broker has secured other coverage acceptable to the insured at least twenty (20) days prior to the anniversary date of the policy or termination of the policy period.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

History: En. Sec. 5, Ch. 262, L. 1971.

40-4410. Proof of notice. Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy or to the named insured's latest known address, shall be sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971.

40-4411. Penalty for violation. Any insurer willfully violating any provisions of section 4 [40-4408] is guilty of a misdemeanor and is punishable by a fine of not exceeding five hundred dollars ($500) for each violation thereof.

History: En. Sec. 7, Ch. 262, L. 1971.

40-4412. No liability for statements in connection with cancellation or nonrenewal. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or against any insurer, its authorized representative, its agents, its employees or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971.

40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited. Whenever an action for damages is filed against, or a claim or demand for damages is made to an insurer of, a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim or demand for error, omission, professional

negligence, or performance of services without consent, and such action, claim or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim or demand shall not be a ground for cancellation nor for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971; amd. Sec. 1, Ch. 303, L. 1973.

Title of Act

An act to prohibit insurers from canceling a professional liability insurance policy or increasing the premium rates thereon because of claims, demands or lawsuits that are determined to be unfounded or where nonliability is established.

Amendments

The 1973 amendment extended this section to nursing home administrators and long-term care facilities.

40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent, shall not cancel the policy so insuring such person or increase the premium rates thereon without first providing the insured sixty (60) days written notice of the insurer's intention to cancel the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971; amd. Sec. 2, Ch. 303, L. 1973.

Title of Act

An act to prohibit insurers from canceling a professional liability insurance policy or increasing the premium rates thereon without first providing the insured sixty (60) days notice in writing prior to such cancellation or increase in premium rate.

Amendments

The 1973 amendment extended this section to nursing home administrators and long-term care facilities.

40-4415. Written notice required for cancellation or nonrenewal of fire insurance policies. No insurer shall cancel or refuse to renew any policy providing fire coverage on any home occupied by the insured as a domicile without first giving to the insured thirty (30) days' notice in writing.

History: En. Sec. 1, Ch. 374, L. 1971.

Title of Act

An act to require thirty day notice of cancellation or nonrenewal of fire insurance policies and providing a penalty for violation under section 40-2617, R. C. M., 1947.

40-4416. Penalty for cancellation or nonrenewal of fire insurance policies without required notice. Violation of this section is punishable under section 40-2617, R. C. M., 1947 (general penalty).

History: En. Sec. 2, Ch. 374, L. 1971.

CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

Section 40-4705. Incorporation.
40-4745. Mergers and consolidations of stock insurers.
40-4751. Equity securities of domestic stock insurance company—statement of ownership.
40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.
40-4753. Short sales of equity securities prohibited—time for delivery after sale.
40-4754. Exemptions—securities held in an investment account—primary or secondary market.
40-4755. Exemptions—arbitrage transactions.
40-4756. "Equity security" defined.
40-4757. Exemptions—registered securities—holding by less than one hundred persons.
40-4758. Rules and regulations of commissioner—classifications—effect.

40-4705. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Incorporators. Five (5) or more individuals, none of whom are less than eighteen (18) years of age, may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) Articles of incorporation. The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) to (c) * * * [Same as parent volume.]

(d) If a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least one dollar ($1). Shares without par value, or other than one (1) class of voting common stock, shall not be authorized. The articles of incorporation may limit or deny present or future stockholders pre-emptive or preferential rights to acquire additional issues of the stock, or bonds, debentures or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes or consent proceedings.

(e) to (k). * * * [Same as parent volume.]

History: En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973.

Amendments

The 1971 amendment reduced the age specified in the first sentence of subsection (2) from 21 to 18 years.

The 1973 amendment deleted "constitution and" before "laws of Montana" in the third sentence of subdivision (3)(d).

40-4743. Mutualization of stock insurers.

Compiler's Notes

Section 15-1905, referred to in subd. (e) of subsection (2) of this section in the parent volume, was repealed by Sec. 143, Ch. 300, Laws 1967.

40-4745. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state and by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2) and (3) below.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971.

Amendments

The 1971 amendment substituted "corporations authorized to transact business" for "insurers authorized to transact insurance" in subsection (1); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 151, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

40-4751. Equity securities of domestic stock insurance company—statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Sec. 1, Ch. 159, L. 1965.

Title of Act

An act relating to insider trading of domestic stock insurance company equity securities.

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit

within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965.

40-4753. **Short sales of equity securities prohibited—time for delivery after sale.** It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965.

40-4754. **Exemptions—securities held in an investment account—primary or secondary market.** The provisions of section 2 [40-4752] of this act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

40-4755. **Exemptions—arbitrage transactions.** The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

40-4756. **"Equity security" defined.** The term "equity security" when used in this act means any stock or similar security; or any security

convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

History: En. Sec. 6, Ch. 159, L. 1965.

40-4757. Exemptions—registered securities—holding by less than one hundred persons. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

40-4758. Rules and regulations of commissioner — classifications — effect. The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

CHAPTER 48—FARM MUTUAL INSURERS

Section 40-4804. Limit of risk.
40-4807. Who may form a farm mutual insurer.

40-4801. Scope of chapter—provisions exclusive.

Compiler's Notes

Sections 40-1501 to 40-1517 and 40-1601 to 40-1625, referred to in subdivisions (1) (a) and (1)(b) of this section in the parent volume, were repealed by Sec. 673, Ch. 286, Laws 1959.

40-4804. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of the insurer or fifteen thousand dollars ($15,000), whichever is the larger amount.

(2). * * * [Same as parent volume.]

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967.

Amendments

The 1967 amendment substituted "fifteen thousand dollars ($15,000)" for "five thousand dollars" in subsection (1).

40-4807. Who may form a farm mutual insurer. (1) One hundred (100) or more individuals residing in this state, each of whom is eighteen (18) years of age or more, who collectively own farm property as referred to in section 40-4803 (1) (a) of this chapter valued at not less than five hundred thousand dollars ($500,000) which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than five thousand dollars ($5,000), may incorporate a state mutual insurer.

(2) Twenty-five (25) or more individuals residing in this state, each of whom is eighteen (18) years or more of age, each of whom owns farm land or ranch land valued at five thousand dollars ($5,000) or more in the county wherein is to be located the principal office of the proposed insurer, or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in section 40-4803 (1) (a) of this chapter valued at not less than one hundred twenty-five thousand dollars ($125,000) which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the minimum age specified in each of the two subsections from 21 to 18 years.

CHAPTER 49—BENEVOLENT ASSOCIATIONS

Section 40-4917. Other provisions applicable.
40-4918. Annual license.

40-4917. Other provisions applicable. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows:

(1) Chapter 26 (scope of code).

(2) Chapter 27 (the commissioner of insurance), except section 40-2726 fees and licenses.

(3) to (9) * * * [Same as parent volume.]

History: En. Sec. 537, Ch. 286, L. 1959; amd. Sec. 1, Ch. 297, L. 1971.

Amendments

The 1971 amendment added the exception to subdivision (2).

40-4918. Annual license. Associations which are now authorized to transact business in this state may continue such business until the first day of June next succeeding the effective date of this section. The authority of such association may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding June. However,

a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the association shall pay the commissioner twenty-five dollars ($25). A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297, L. 1971.

Title of Act

An act to amend section 40-4917, R. C. M. 1947, exempting benevolent associations from licenses and fees and to add a new section numbered 40-4918 requiring an annual license for benevolent associations and providing an effective date.

Effective Date

Section 3 of Ch. 297, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

CHAPTER 51—REHABILITATION AND LIQUIDATION

40-5101. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Insurers Liquidation Act: Alaska, Arizona, Arkansas, Florida, Idaho, Oklahoma, Tennessee, West Virginia, Wisconsin and Wyoming.

CHAPTER 53—FRATERNAL BENEFIT SOCIETIES

Section 40-5321. Qualifications for membership.
40-5324. Benefits on lives of children.

40-5321. Qualifications for membership. A society may admit to benefit membership any person not less than fifteen (15) years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six (6) months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Any person admitted prior to attaining the full age of eighteen (18) years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History: En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified near the beginning of the second paragraph from 21 to 18 years.

40-5324. Benefits on lives of children. (1) A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than eighteen (18) years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of section 40-5323 of this chapter. A society may, at its option,

organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(2). * * * [Same as parent volume.]

History: En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the age specified in the first sentence of subsection (1) from 21 to 18 years.

CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

Section 40-5401. Purpose of act.
40-5402. Definition of terms.
40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.
40-5404. Agents authorized to write coverage.
40-5405. Corporate powers of association—examination of books.
40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.
40-5407. Filing with commissioner by association—deceptive practices prohibited.
40-5408. Exemption of association from other laws.

40-5401. Purpose of act. It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

Title of Act

An act relating to group accident and sickness insurance for persons 65 years of age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

40-5402. Definition of terms. Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of

process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under

this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

40-5407. Filing with commissioner by association—deceptive practices prohibited. The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

40-5408. Exemption of association from other laws. No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

Effective Date

Section 9 of Ch. 61, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

CHAPTER 55—INSURANCE HOLDING COMPANIES

Section 40-5501. Short title.
40-5502. General definitions.
40-5503. Restrictions on transfers of stock.
40-5504. Exemptions from prohibitions on stock transfers.
40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.
40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.
40-5507. Violations of act—penalty.
40-5508. Filing of false information—penalty.
40-5509. Definitions.
40-5510. Subsidiaries of insurers.
40-5511. Acquisition of control of or merger with domestic insurer.
40-5512. Registration of insurers.
40-5513. Standards.
40-5514. Examination.
40-5515. Confidential treatment.
40-5516. Rules and regulations.
40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities.
40-5518. Criminal proceedings.

40-5519. Receivership.
40-5520. Revocation, suspension, or nonrenewal of insurer's license.
40-5521. Judicial review—mandamus.
40-5522. Conflict with other laws.

40-5501. Short title. This act may be cited as the "Montana Insurance Holding Act."

History: En. Sec. 1, Ch. 269, L. 1967.

Compiler's Notes

The title of Chapter 64, Laws of 1971, referred to a repealer of sections 40-5501 to 40-5508. However, no repealer was contained in the body of the act.

Title of Act

An act to provide for control and regulation of the affairs of domestic and foreign insurance holding companies; prescribe rules and regulations governing acquisition and disposal of stock of insurance holding companies; prescribe rules and regulations regarding acquisition and disposal of stock of insurance companies by insurance holding companies; exempting certain acquisitions and disposals of stock from the provisions of the act; subjecting domestic insurers coming within the purview of the act to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review of orders; defining terms; and providing penalties.

40-5502. General definitions. Unless context requires otherwise, in this act:

(1) "Commissioner" means commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Company" means all corporations, joint stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(4) "Insurance Holding Company" means any company:

(a) which directly or indirectly owns, controls or holds with power to vote fifteen per cent (15%) or more of the voting stock of one or more insurance companies; or

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, fifteen per cent (15%) or more of the voting stock of one or more insurance companies is held by one or more trustees; and for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(5) "Affiliate" means:

(a) any company, fifteen per cent (15%) or more of whose voting stock is owned or controlled by an insurance holding company; or

(b) any company, the election of whose directors is controlled in any manner by an insurance holding company; or

(c) any company, fifteen per cent (15%) or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and insurance holding company is such that the transaction effects no substan-

tial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

(7) "Domestic" insurer means one formed under the laws of this state.

(8) "Foreign" insurer means one formed under the laws of any jurisdiction other than this state.

History: En. Sec. 2, Ch. 269, L. 1967.

40-5503. Restrictions on transfers of stock. Except with prior written approval of the commissioner:

(1) No domestic insurance company shall directly or indirectly transfer fifteen per cent (15%) of its voting stock to a foreign or domestic insurance holding company.

(2) No domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, fifteen per cent (15%) or more of the voting stock of the company whose shares it acquires.

(3) No domestic insurance holding company shall, directly or indirectly, transfer more than fifteen per cent (15%) of its authorized and outstanding voting stock to any other corporation, association, partnership or individual.

History: En. Sec. 3, Ch. 269, L. 1967.

40-5504. Exemptions from prohibitions on stock transfers. The prohibitions of section 3 [40-5503] shall not apply to:

(1) Stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) Stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith; provided, such stock shall be sold or otherwise disposed of within two (2) years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) Stock acquired as a consequence of a merger or consolidation of one insurance company with another, or the conversion of one insurance company into another, or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted, or whose assets were the subject of the sale; or

(4) Any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will

permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

History: En. Sec. 4, Ch. 269, L. 1967.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports. Every domestic insurance company, fifteen per cent (15%) of whose stock is held by a domestic or foreign insurance holding company and every domestic insurance holding company as defined by this act, shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each year; and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

History: En. Sec. 5, Ch. 269, L. 1967.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition. Any company or insurance holding company desiring to acquire or transfer stock as regulated by section 3 [40-5503] shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule or regulation shall require. Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If, after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders, or policyholders, or that competition among insurance companies will be unnecessarily affected, he shall deny such petition. Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark county, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

History: En. Sec. 6, Ch. 269, L. 1967.

40-5507. Violations of act—penalty. Any company which fails to comply with the provisions of this act shall be fined by the commissioner in an amount not to exceed one thousand dollars ($1,000.00), and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this act shall be revoked by the commissioner, after a hearing held for that purpose.

History: En. Sec. 7, Ch. 269, L. 1967.

40-5508. Filing of false information—penalty. Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or both.

History: En. Sec. 8, Ch. 269, L. 1967.

40-5509. Definitions. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) Affiliate. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) Commissioner. The term "commissioner" shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

(c) Control. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per cent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 4 [40-5512] (i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) Insurance holding company system. An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(e) Insurer. The term "insurer" shall have the same meaning as set forth in section 40-2603, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) Person. A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) Securityholder. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one (1) or more intermediaries.

(i) Voting security. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971.

Title of Act

An act to provide for control and regulation of the affairs of insurance holding companies; prescribe rules and regulations governing acquisition and disposal of insurance holding companies; subjecting domestic insurers to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review; defining terms; and providing penalties; repealing sections 40-5501 through 40-5508, R. C. M., 1947.

40-5510. Subsidiaries of insurers. (a) Authorization. Any domestic insurer, either by itself or in co-operation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups.

(7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services.

(8) Ownership and management of assets which the parent corporation could itself own or manage.

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function.

(10) Financing of insurance premiums, agents and other forms of consumer financing.

(11) Any other business activity determined by the commissioner to be reasonable ancillary to an insurance business.

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more of the businesses specified in this section.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of five per cent (5%) of such insurer's assets or fifty

per cent (50%) of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

(2) If the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten per cent (10%) of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, provided that, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this clause, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset.

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(c) Exemption from investment restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries

made pursuant to subsection (b) hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers.

(d) Qualification of investment—when determined. Whether any investment pursuant to subsection (b) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

(e) Cessation of control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter, and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971.

40-5511. Acquisition of control of or merger with domestic insurer. (a) Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party").

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten years.

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) Approval by commissioner—hearings. (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(i) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the is-

suance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer.

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in clause (1) shall be held within thirty (30) days after the statement required by subsection (a) is filed, and at least twenty (20) days notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(e) Mailing to shareholders—payment of expenses. All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions. The provisions of this section shall not apply to:

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

(ii) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (2) as otherwise not comprehended within the purposes of this section.

(g) Violations. The following shall be violations of this section:

(i) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b).

(ii) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(h) Jurisdiction—consent to service of process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

History: En. Sec. 3, Ch. 64, L. 1971.

40-5512. Registration of insurers. (a) Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty (60) days after the effective date of this article or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(ii) The identity of every member of the insurance holding company system.

(iii) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company.

(iv) All matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to section 4 (b) [subdivision (b) of this section] if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half (½) of one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of section 5 [40-5513], each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) Alternative registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

History: En. Sec. 4, Ch. 64, L. 1971.

40-5513. Standards. (a) Transactions with affiliates. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of surplus. For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

(8) The surplus as regards policyholders maintained by other comparable insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries made pursuant to section 3 [40-5511]. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) Dividends and other distributions. No insurer subject to registration under section 6 [40-5514] shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such thirty (30) day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of ten per cent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve (12) month period ending the thirty-first day of December next preceding, but shall not include prorata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty (30) day period referred to above.

History: En. Sec. 5, Ch. 64, L. 1971.

40-5514. Examination. (a) Power of commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under sections 40-2713, 40-2714, 40-2715, 40-2716, 40-2717, R. C. M., 1947, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 4 [40-5512] to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commis-

sioner shall have the power to examine such affiliates to obtain such information.

(b) Purpose and limitation of examination. The commissioner shall exercise his power under subsection (a) above only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination.

History: En. Sec. 6, Ch. 64, L. 1971.

40-5515. Confidential treatment. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 6 [40-5514] and all information reported pursuant to section 4 [40-5512], shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: En. Sec. 7, Ch. 64, L. 1971.

40-5516. Rules and regulations. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this article.

History: En. Sec. 8, Ch. 64, L. 1971.

40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities. (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this article or any such rule, regulation or order, and for such other equitable re-

lief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) Voting of securities—when prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court for Lewis and Clark county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 5 [40-5513] or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(c) Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the commissioner hereunder, the district court for Lewis and Clark county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971.

40-5518. Criminal proceedings. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this article may be fined not more than five thousand dollars ($5,000). Any individual who willfully violates this article may be fined

not more than five hundred dollars ($500) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two (2) years or both.

History: En. Sec. 10, Ch. 64, L. 1971.

40-5519. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971.

40-5520. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971.

40-5521. Judicial review—mandamus. (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom to the district court for Lewis and Clark county. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Lewis and Clark county for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971.

40-5522. Conflict with other laws. All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

History: En. Sec. 14, Ch. 64, L. 1971.

Separability Clause

Section 15 of Ch. 64, Laws 1971 read "Separability of provisions. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are separable."

CHAPTER 56—WORKMEN'S COMPENSATION INSURANCE PREMIUM RATES

Section 40-5601. Declaration of policy—purpose of act.
40-5602. Applicability of act.
40-5603. Certain reciprocal insurers excluded.
40-5604. Rates, how made.
40-5605. Excessive, inadequate or discriminatory rates prohibited.
40-5606. Uniformity neither required nor prohibited.
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40-5611. Notice and hearing on disapproval of filing subsequent to review period.
40-5612. Filings meeting requirements of act not disapproved.
40-5613. Enforcement of filed rates—lower rates prohibited.
40-5614. Excess rates.
40-5615. Deviations from filings—procedure and effect of modifications.
40-5616. Membership in rating organization required.
40-5617. Composition of rating organization.
40-5618. Industrial accident board as member of committee on operation of rating organization—other members.

40-5601. Declaration of policy—purpose of act. (1) It is declared that the public welfare is served by the making of premium rates for workmen's compensation insurance coverage in concert, and that the review by the state of the rates so made is necessary and desirable in the public interest.

(2) It is the purpose of this act (a) to authorize such rate-making in concert, and the operating of rating organizations thereto;

(b) to establish the general bases and standards for the making of such rates;

(c) to provide for review by the state of such rate-making and the results thereof.

History: En. Sec. 1, Ch. 329, L. 1969.

Title of Act

An act to establish a policy for the making of premium rates for workmen's compensation insurance issued under plan Number 2 of the Workmen's Compensation Act, sections 92-1001 through 92-1012, R. C. M. 1947, and plan Number 3 of the Workmen's Compensation Act, sections 92-1101 through 92-1123, R. C. M. 1947, and to insurance or guaranty by surety insurers of the obligations of employers under the Workmen's Compensation Act; providing for rate-making factors, rate standards and uniformity of rates, and providing for rate filing, exemptions from filing and effective date of filing; providing for disapproval of rate filing by the state auditor, ex officio commissioner of insurance; providing for disapproval of filing after consideration by the commissioner of insurance; providing for the scope of disapproval power by the commissioner of insurance; providing for adherence to filing; relating to excess rates, deviations from such rates and defining the power of the commissioner of insurance relative thereto; requiring rating organization membership and application of the laws of Montana as to certain powers of the commissioner of insurance and to

certain public employment; repealing all acts and parts of acts in conflict herewith; providing for filings by rating bureaus with the commissioner of insurance, including workmen's compensation insurance; requiring membership in a rating organization of all insurers writing workmen's compensation insurance and requiring membership of the Montana state industrial accident board, without election, on any committee of a rating organization of which it is a member; providing for application to the commissioner of insurance for percentage increase or decrease of premiums and providing procedure therefor; amending section 92-1101, R. C. M. 1947, relating to payment of premiums by employers under plan Number 3 and referring to industrial accident board's membership in a rating organization; amending section 92-1104, R. C. M. 1947, relating to industrial accident board's power to determine premiums and referring to its membership in a rating organization; and amending section 92-1105, R. C. M. 1947, relating to the intent and purpose of plan Number 3, and referring to the industrial accident board's membership in a rating organization.

Cross-References

Workmen's Compensation Act, Sec. 92-101 et seq.

40-5602. **Applicability of act.** This act applies to the making of premium rates for workmen's compensation insurance issued under compensation plan Number 2 of the Workmen's Compensation Act, sections 92-1001 to and including 92-1012, and for workmen's compensation insurance issued under compensation plan Number 3 of the Workmen's Compensation Act, sections 92-1101 to and including 92-1123.

History: En. Sec. 2, Ch. 329, L. 1969.

40-5603. **Certain reciprocal insurers excluded.** This act shall not apply as to any reciprocal insurer transacting workmen's compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969.

40-5604. **Rates, how made.** All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among

risks that can be demonstrated to have a probable effect upon losses or expenses.

History: En. Sec. 4, Ch. 329, L. 1969.

40-5605. Excessive, inadequate or discriminatory rates prohibited. Rates shall not be excessive, inadequate or unfairly discriminatory.

History: En. Sec. 5, Ch. 329, L. 1969.

40-5606. Uniformity neither required nor prohibited. Except to the extent necessary to meet the provisions of section 4 [40-5604], uniformity among insurers in any matter within the scope of section 4 [40-5604] and section 5 [40-5605] is neither required nor prohibited.

History: En. Sec. 6, Ch. 329, L. 1969.

40-5607. Classification manuals, rules and rating plans filed with commissioner—supporting information required—public inspection. (1) There shall be filed with the insurance commissioner on behalf of every insurer writing workmen's compensation coverages in this state, every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the filing is supported, and the insurance commissioner does not have sufficient information to determine whether such filing meets the requirements of this act, he shall require the insurer's rating organization or the insurer to furnish the information upon which it supports the filing and in such event, the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

(a) the experience or judgment of the insurer;

(b) the insurer's or rating organization's interpretation of any statistical data relied upon;

(c) the experience of other insurers or rating organizations; or

(d) any other relevant factors.

(2) A filing and any supporting information shall be open to public inspection after the filing becomes effective.

History: En. Sec. 7, Ch. 329, L. 1969.

40-5608. Suspension or modification of filing requirements. Under such rules and regulations as he shall adopt, the insurance commissioner may, by written order, suspend or modify the requirements of filing as to any kind of insurance, subdivision or combination thereof, or as to classes or risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The insurance commissioner may make such examination as he may deem advisable

to ascertain whether any rates affected by such order meet the standards set forth in section 5 [40-5605].

History: En. Sec. 8, Ch. 329, L. 1969.

40-5609. Review of filings by commissioner—waiting period—special filings. (1) The insurance commissioner shall review filings as soon as reasonably possible after they have been made, in order to determine whether they meet the requirements of this act.

(2) Subject to the exception specified in subsection (3) below, each filing shall be on file for a waiting period of fifteen (15) days before it becomes effective, which period may be extended by the insurance commissioner for an additional period, not to exceed fifteen (15) days if he gives written notice within such waiting period to the rating organization which made the filing, that he needs such additional time for the consideration of the filing. Upon the written application by the insurer or rating organization, the insurance commissioner may authorize a filing which he has reviewed to become effective before expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this act unless disapproved by the insurance commissioner within the waiting period or any extension thereof.

(3) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this act until such time as the insurance commissioner reviews the filing and so long thereafter as the filing remains in effect.

History: En. Sec. 9, Ch. 329, L. 1969.

40-5610. Notice of disapproval of filing. If, within the waiting period or any extension thereof as provided in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall send to the rating organization which made the filing, written notice of disapproval of the filing, specifying therein in what respect he finds the filing fails to meet the requirements of this act and stating that the filing shall not become effective.

History: En. Sec. 10, Ch. 329, L. 1969.

40-5611. Notice and hearing on disapproval of filing subsequent to review period. If, at any time subsequent to the applicable review period provided for in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall, after a hearing held upon not less than ten (10) days' written notice specifying the matters to be considered at such hearing, to every rating organization which made the filing, issue an order specifying in what respect he finds that the filing fails to meet the requirements of this act, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to

every such rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

History: En. Sec. 11, Ch. 329, L. 1969.

40-5612. Filings meeting requirements of act not disapproved. No manual of classifications, rules, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 7 [40-5607], shall be disapproved if the rates thereby produced meet the requirements of this act.

History: En. Sec. 12, Ch. 329, L. 1969.

40-5613. Enforcement of filed rates—lower rates prohibited. No insurer shall issue, renew or continue in force in this state any workmen's compensation insurance at premium rates which are less than the rates applicable under the filings in effect for the insurer, or in effect in accordance with section 8 [40-5608], except as is otherwise provided in this act as to the industrial accident board.

History: En. Sec. 13, Ch. 329, L. 1969.

40-5614. Excess rates. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the insurance commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

History: En. Sec. 14, Ch. 329, L. 1969.

40-5615. Deviations from filings—procedure and effect of modifications. (1) Every member of a rating organization shall adhere to the filings made on its behalf by such organization, except that any plan Number 2 insurer may make written application to the insurance commissioner for permission to file a uniform percentage decrease or increase to be applied to the premium produced by the rating system so filed for a kind of insurance or for a class of insurance which is found by the insurance commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance:

(a) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes; or

(b) for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization.

(2) The insurance commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the insurance commissioner is advised by the rating organi-

zation that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In permitting or denying such modification with respect to workmen's compensation insurance, the insurance commissioner shall give consideration to the operating methods and expense provisions of the insurer as compared with the expense provisions included in the rating system filed by such rating organization.

(3) The insurance commissioner shall issue an order permitting the modification for such insurer to be filed, if he finds it to be justified, and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission, unless terminated sooner with the approval of the insurance commissioner.

(5) Any deviation adopted by the industrial accident board for plan Number 3 rates shall be final and without review or approval by the state insurance commissioner except that the said board shall file with the insurance commissioner's office a schedule of such deviations so adopted and a statement of the bases for such modification.

History: En. Sec. 15, Ch. 329, L. 1969.

40-5616. Membership in rating organization required. Every insurer, including the Montana state industrial accident board, writing workmen's compensation insurance in this state, shall be a member of a workmen's compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

History: En. Sec. 16, Ch. 329, L. 1969.

40-5617. Composition of rating organization. Such a rating organization shall have as members not less than five (5) insurers authorized to write and writing workmen's compensation insurance in this state, and whose combined experience is determined by the insurance commissioner to be reasonably adequate for rate-making purposes.

History: En. Sec. 17, Ch. 329, L. 1969.

40-5618. Industrial accident board as member of committee on operation of rating organization—other members. In a rating organization of which the Montana industrial accident board is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three (3) members as herein provided for.

History: En. Sec. 18, Ch. 329, L. 1969.

Repealing Clause

Section 19 of Ch. 329, Laws 1969 repealed all acts and parts of acts in conflict therewith.

CHAPTER 57—INSURANCE GUARANTY ASSOCIATION

Section 40-5701. Title.
40-5702. Purpose.
40-5703. Scope.
40-5704. Construction.
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40-5706. Creation of the association.
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40-5715. Tax exemption.
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40-5717. Immunity.
40-5718. Stay of proceedings—reopening of default judgments.

40-5701. Title. This act shall be known and may be cited as the Montana Insurance Guaranty Association Act.

History: En. Sec. 1, Ch. 63, L. 1971.

Title of Act

A bill to provide a guaranty association for all insurers, to protect the public from insurer insolvency and providing for assessment among association members under certain conditions.

40-5702. Purpose. The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

History: En. Sec. 2, Ch. 63, L. 1971.

40-5703. Scope. This act shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty and ocean marine insurance.

History: En. Sec. 3, Ch. 63, L. 1971.

40-5704. Construction. This act shall be liberally construed to effect the purpose under section 2 [40-5702] which shall constitute an aid and guide to interpretation.

History: En. Sec. 4, Ch. 63, L. 1971.

40-5705. Definitions. As used in this act, (1) "Association" means the Montana insurance guaranty association created under section 6 [40-5706] of this act.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent

insurer after the effective date of this act and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due an reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(4) "Insolvent insurer" means (a) an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

(5) "Member insurer" means any person who (a) writes any kind of insurance to which this act applies under section 3 [40-5703], including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(6) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(7) "Person" means any individual, corporation, partnership, association or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971.

40-5706. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 9 [40-5709] and shall exercise its powers through a board of directors established under section 7 [40-5707].

History: En. Sec. 6, Ch. 63, L. 1971.

40-5707. Board of directors. (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty (60) days after the effective date of this act, the commissioner may appoint the initial members of the board of directors.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971.

40-5708. **Powers and duties of the association.** (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars ($100) and is less than three hundred thousand [dollars] ($300,000), except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 13 [40-5713] and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two per cent (2%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commissioner directs under section 10 [40-5710] (2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(2) The association may: (a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this act.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971.

40-5709. Plan of operation. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall: (a) Establish the procedures whereby all the powers and duties of the association under section 8 [40-5708] will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under section 7 [40-5707].

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under section 8 [40-5708] (1)(c) and 8 [40-5708] (2)(b), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

History: En. Sec. 9, Ch. 63, L. 1971.

40-5710. Duties and powers of the commissioner.

(1) The commissioner shall: (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may: (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of

operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five per cent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars ($100) per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this act shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971.

40-5711. Effect of paid claims. (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971.

40-5712. Nonduplication of recovery. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the in-

sured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971.

40-5713. Prevention of insolvencies. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971.

40-5714. Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971.

40-5715. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971.

40-5716. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. Sec. 16, Ch. 63, L. 1971.

40-5717. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

History: En. Sec. 17, Ch. 63, L. 1971.

40-5718. Stay of proceedings—reopening of default judgments. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971.

REVISED CODES OF MONTANA

VOLUME 3
Part 2
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 3 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3 (PART 2) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

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CHAPTER 1—OBLIGATIONS OF EMPLOYERS

Section 41-118. Deceived employees—action for damages.

41-103. (7758) **When not.**

Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. Wollan v. Lord, 142 M 498, 385 P 2d 102.

Employee with prior back injury who neither informed his employer of his previous injury, nor refused to lift 500-pound tire without additional help, assumed the risk of the resultant additional injury to his back. McLaughlin v. Ballard, 156 M 181, 478 P 2d 281.

41-118. Deceived employees—action for damages. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state, through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to, such engagement. Failure to state in any advertisement, proposal, or con-

tract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment, against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973.

CHAPTER 2—OBLIGATIONS OF EMPLOYEES

41-211. (7778) What belongs to employer.

Customer Lists

Where names and addresses of milk-route customers were not confidential and were readily accessible, route salesman who terminated his employment with a dairy and returned his list of customers but remembered their names and addresses would not be enjoined from soliciting them as customers for a competing dairy. Best Dairy Farms, Inc. v. Houchen, 152 M 194, 448 P 2d 158.

CHAPTER 3—TERMINATION OF EMPLOYMENT

Section 41-304. Termination at will.
41-305.1. Termination of employment because of attachment or garnishment prohibited.

41-304. (7789) Termination at will.

An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by sections 41-101 to 41-407 and 2-109 to 2-112 and 2-401 to 2-405, and except as provided in section 1 [41-305.1] of this act.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R. C. M. 1921; amd. Sec. 2, Ch. 245, L. 1969. Cal. Civ. C. Sec. 1999. Field Civ. C. Sec. 1029.

Amendments

The 1969 amendment added "and except as provided in section 1 of this act."

41-305. (7790) Termination by employer for fault.

Burden of Proof

Employer, who introduced evidence of drinking, hang-overs, and other matters in an effort to establish cause for discharge but whose superintendent testified as to employee's good work and that employer instructed him to tell employee that employer did not have any more work, was running out of money, and could not carry a crew through the winter, failed to establish that employee's discharge was for good cause. Ameline v. Pack & Co., 157 M 301, 485 P 2d 689.

41-305.1. Termination of employment because of attachment or garnishment prohibited.

No employer shall discharge or lay off an em-

ployee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969.

Title of Act

An act relating to termination of employment providing that garnishment or attachment of wages may not be grounds for termination of employment; amending section 41-304, R. C. M. 1947.

41-307. (7792) **Compensation of employee dismissed for cause.**

Dismissal for Cause

Employer, who introduced evidence of drinking, hang-overs, and other matters in an effort to establish cause for discharge, but whose superintendent testified as to employee's good work, that employer instructed him to tell employee that employer did not have any more work, was running out of money, and could not carry a crew through the winter, failed to establish that employee's discharge was for "good cause." Ameline v. Pack & Co., 157 M 301, 485 P 2d 689.

CHAPTER 4—MASTER AND SERVANT

41-403. (7796) **Same—presumed to be monthly, when.**

Reimbursement of Expenses

This section is broad enough to cover reimbursement of expenses incurred by the employee, and employee's claim for reimbursement accrued monthly in the absence of any other understanding. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

CHAPTER 6—REPORT OF ALIEN EMPLOYEES TO INDUSTRIAL ACCIDENT BOARD

(Repealed—Section 1, Chapter 144, Laws of 1971)

41-601 to 41-604. (3040 to 3043) **Repealed.**

Repeal

Sections 41-601 to 41-604 (Secs. 1 to 4, Ch. 134, L. 1919), relating to reports on alien employees, were repealed by Sec. 1, Ch. 144, Laws 1971.

CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

Section 41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.

41-701. (3043.1) **Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.** In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county

or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of workman needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of workman needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer or officers. The Montana commissioner of labor and industry shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

History: En. Sec. 1, Ch. 102, L. 1931; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973.

Amendments

The 1969 amendment rewrote portions of this section, redefining the standard prevailing rate of wages to include fringe benefits for health and welfare and pension contributions and travel allowance provisions, providing for approval of public works contracts by the contracting state agency's legal adviser and requiring the commissioner of labor and industry to keep copies of collective bargaining agreements and other information.

The 1973 amendment inserted "services" near the beginning of the first sentence.

CHAPTER 8—VOCATIONAL REHABILITATION AND EDUCATION

Section 41-801. Definitions.
41-803. Director of division of vocational rehabilitation.
41-804. Administration.
41-808. Eligibility for vocational rehabilitation.
41-810. Hearings.
41-816. Vocational rehabilitation of handicapped persons—legislative purpose and findings.
41-817. Definitions.
41-818. Purchase of services for handicapped persons—maximum amount—determination of eligibility—register of qualified organizations—rules and regulations.
41-819. Use of federal funds.

41-801. Definitions. As used in this act:

(a) to (d). * * * [Same as parent volume.]

(e) "Disabled individual" means any person with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist;

(f) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap, and to enable him in so far as possible to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials, facilities for groups of handicapped, service to family members and follow-up service;

(g). * * * [Same as parent volume.]

(h) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions, (except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion);

(i) to (k). * * * [Same as parent volume.]

(l) "Regulations" means regulations made by the director with the approval of the state board;

(m) "Rehabilitation plan" means a plan for providing services that will render a disabled individual employable and is jointly developed by the client and a representative of this division.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971.

Amendments

The 1971 amendment substituted "with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist" at the end of subdivision (e) for "who has a substantial employment handicap"; added "facilities for groups of handicapped, service to family members and follow-up service" at the end of subdivision (f); deleted "not to exceed ninety (90) days" following "hospital care" in subdivision (h); added at the end of subdivision (h) the clause enclosed in parentheses; and added subdivision (m).

41-802. Establishment of division of vocational rehabilitation.

Cross-References

Division abolished and functions transferred, sec. 82A-1902(2).

41-803. Director of division of vocational rehabilitation. The division shall be administered, under the general supervision and direction of the state board, by a director appointed by such board in accordance with established personnel standards and on the basis of his education,

training, experience, and demonstrated ability. In carrying out his duties under this act, the director

(a) to (c). * * * [Same as parent volume.]

(d) shall prepare and submit to the state board annual reports of activities and expenditures, and report as provided in section 2 [82-4002] of this act;

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "report as provided in section 2 of this act" for "prior to each regular session of the legislature, estimates of sums required for carrying out this act and estimates of the amounts to be made available for this purpose from all sources" in subdivision (d).

41-804. Administration. Except as otherwise provided by law, the state board, through the division, shall provide vocational rehabilitation services to disabled individuals determined by the director to be eligible therefor, and, in carrying out the purposes of this act, the division is authorized, among other things,

(a). * * * [Same as parent volume.]

(b) to conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

History: En. Sec. 4, Ch. 74, L. 1947; amd. Sec. 4, Ch. 53, L. 1961; amd. Sec. 2, Ch. 192, L. 1971.

Amendments

The 1971 amendment deleted a former subdivision (b) reading "to enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned"; and redesignated former subdivision (c) as subdivision (b).

Cross-References

Board of education functions transferred to department of social and rehabilitation services, sec. 82A-1903.

41-808. Eligibility for vocational rehabilitation. Vocational rehabilitation services shall be provided to any disabled individual (1) who is in the state at the time of filing his application therefor and whose vocational rehabilitation, the director determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government: Provided, that, except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state board thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(a) to (f). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971.

Amendments

The 1971 amendment substituted "in the state" for "a resident of the state" in clause (1) in the preliminary paragraph.

41-810. Hearings. Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the division shall be entitled, in accordance with regulations, to a fair hearing by the state board.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971.

Amendments

The 1971 amendment substituted "division" for "bureau."

Cross-References

Quasi-judicial functions of board transferred to board of social and rehabilitation appeals, sec. 82A-1907(2).

41-816. Vocational rehabilitation of handicapped persons—legislative purpose and findings. The purpose of this act is to encourage the development, improvement and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency.

The condition of the mentally retarded, severely handicapped and disadvantaged is such that after laborious training in the schools and otherwise they reach the point in their lives where they can and should, under proper and continued guidance, engage in sheltered employment or supervised work to help them become contributing members of society instead of being dependent. For such persons, retention in sheltered employment or supervised work may constitute satisfactory placement. Such training and placement is often a suitable alternative to institutionalization or idleness and its consequences. By keeping these individuals within their communities and in touch with their families, a worthwhile dimension is added to their lives and they are thus spared the anxieties naturally attached to separation. All of these factors have also been shown to reflect tangible benefits upon the mentally retarded, severely handicapped or disadvantaged person by improving his over-all well-being.

History: En. Sec. 1, Ch. 322, L. 1973.

Title of Act

An act authorizing the department of social and rehabilitation services to purchase vocational rehabilitation services for handicapped persons; authorizing the department to promulgate rules and regulations under this act; and providing for the expenditure of funds for this purpose.

41-817. Definitions. (1) "Handicapped person" means any individual:

(a) who has a physical or mental disability, which constitutes a substantial handicap to employment, of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a gainful occupation consistent with his capacities and abilities; or

(b) who, because of lack of social competence or mobility, experience, skills, training or other factors, is in need of vocational rehabilitation services in order to become fit to engage in a gainful occupation or to attain or maintain a maximum degree of self-support or self-care; or

(c) for whom vocational rehabilitation services are necessary to determine rehabilitation potential.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family

and community which may result from vocational, educational, cultural, social, environmental or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including, but not limited to, the establishment, construction, development, operation and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home, rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

History: En. Sec. 2, Ch. 322, L. 1973.

41-818. Purchase of services for handicapped persons — maximum amount — determination of eligibility — register of qualified organizations — rules and regulations. (1) The department may purchase, from any source, by contract, vocational rehabilitation services for handicapped persons, payments for such services to be made subject to procedures and fiscal controls approved by the department of administration. The performance of and payment for such services shall be subject to post-audit review by the state auditor.

(2) Notwithstanding any other provision of this act, when the department determines that a mentally retarded, severely handicapped or disadvantaged person can reasonably be expected to benefit from, or in his best interests reasonably requires extended sheltered employment or supervised work furnished by an approved nonprofit organization, the department is authorized to contract with such organization for the furnishing of such sheltered employment or supervised work to such mentally retarded, severely handicapped or disadvantaged person. The department is authorized to expend for or toward the cost of providing such sheltered employment or supervised work a sum or sums not to exceed one thousand five hundred dollars ($1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person in order to maintain him as a contributing and self-supporting member of society as an alternative to dependency; provided, that the department is authorized to expend in excess of one thousand five hundred dollars ($1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person when federal or other funding becomes available to the state agency for such purpose and such additional expenditures may continue as long as the additional federal or other funding is or becomes available.

(3) The determination of eligibility for such service shall be made for each individual by the department.

(4) The department shall maintain a register of nonprofit organizations which it has inspected and certified as meeting required standards and as qualifying to serve the needs of such mentally retarded, severely handicapped or disadvantaged persons. Eligibility of organizations to receive the funds specified by this act shall be based upon standards and criteria promulgated by the department.

(5) The department is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section.

History: En. Sec. 3, Ch. 322, L. 1973.

41-819. Use of federal funds. Federal funds as may be available are appropriated to the department for use in administering the provisions of this act.

History: En. Sec. 4, Ch. 322, L. 1973.

CHAPTER 9—STATE BOARD OF ARBITRATION AND CONCILIATION

Section 41-906. Decisions of board—report to governor.

41-901. (3052) State board of arbitration and conciliation.

Cross-References
Board abolished, sec. 82A-1010(2).

41-904. (3055) Settlement of controversies.

Cross-References
Professional Negotiations Act for Teachers, secs. 75-6115 et seq.

41-906. (3057) Decisions of board—report to governor. Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, [and] the board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 3335, Pol. C. 1895; re-en. Sec. 1675, Rev. C. 1907; re-en. Sec. 3057, R. C. M. 1921; amd. Sec. 13, Ch. 93, L. 1969.

Compiler's Notes
The compiler has inserted the bracketed word "and."

Amendments
The 1969 amendment substituted "the board shall report as provided in section 2 of this act" for "and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year."

CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1120. Violation of preceding section a misdemeanor—penalty.
41-1123. Railway employees—hours of labor.
41-1135. Employment of persons under eighteen as bartenders forbidden.
41-1136. Penalty.

41-1118. (3076) Repealed.

Repeal

Section 41-1118 (Sec. 1, Ch. 108, L. 1913; Sec. 1, Ch. 18, L. 1917), relating to hours of labor for female employees, was repealed by Sec. 2, Ch. 51, Laws 1971.

41-1120. (3078) Violation of preceding section a misdemeanor—penalty. Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in section 41-1119, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars ($50) nor more than two hundred dollars ($200), or be imprisoned in the county jail for a period of not less than ten (10) nor more than sixty (60) days, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1971.

Amendments

The 1971 amendment deleted clauses relating to violations of section 41-1118 which appeared near the beginning of the section; and made minor changes in style.

Repealing Clause

Section 2 of Ch. 51, Laws 1971 read "Section 41-1118, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 51, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 20, 1971.

41-1123. (3081) Railway employees—hours of labor. On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed twelve (12) consecutive hours, or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

History: En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1969.

Amendments

The 1969 amendment deleted "steam" before "railroads" at the beginning of the first sentence and reduced maximum consecutive hours of labor from sixteen to twelve.

Constitutionality

This section and section 41-1124, which purport to regulate maximum number of consecutive working hours of railroad employees, are unconstitutional under supremacy clause of United States constitution since they are in direct conflict with 45 U.S.C. §§ 61 to 64 which regulate same matter. Union Pacific R. Co. v. Woodahl, 308 F Supp 1002.

41-1135. Employment of persons under eighteen as bartenders forbidden. No person under the age of eighteen (18) years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail.

History: En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the minimum age from 21 to 19 years.

The 1973 amendment reduced the minimum age from 19 to 18 years.

41-1136. Penalty. Any retail vendor of liquors, beer or wines who employs any such person under the age of eighteen (18) years is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years.

The 1973 amendment reduced the specified age from 19 to 18 years.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

Section 41-1201. Apprenticeship council.
41-1202. Duties of state apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). * * * [Same as parent volume.]

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963.

Amendment

The 1963 amendment completely rewrote subsection (a), for previous version of which see parent volume; and added subsection (e).

Cross-References

Council abolished and functions transferred, sec. 82A-1002(2).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

Amendment

The 1963 amendment deleted a final sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES

Section 41-1302. Penalty for failure to pay wages at times specified in law.
41-1303. Employees separated from employment before payday—wages, when payable.
41-1304. Period within which employee may recover penalties.
41-1314.1. Enforcement.
41-1314.2. Authority to take wage assignments.
41-1325. [Transferred from Title 94.]

41-1302. (3085) **Penalty for failure to pay wages at times specified in law.** Any employer, as such employer is defined in this act, who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows:

A sum equivalent to the fixed amount of five (5%) per cent of the wages due and unpaid, shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than twenty (20) days after the date such wages were due.

It shall be the duty of the commissioner of labor to inquire diligently for any violations of this act, and to institute actions for the collection of unpaid wages and for the penalties provided for herein, in such cases as he may deem proper, and to enforce generally the provisions of this act.

Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state of Montana to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967.

Amendments

The 1967 amendment extended the application of the first sentence to violations of the entire act; substituted the present second sentence for "A penalty shall also attach to such employer and become due such employee as follows: A sum equivalent to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due"; inserted "for the collection of unpaid wages and for the" in the next to last paragraph; and made minor changes in phraseology.

41-1303. (3086) **Employees separated from employment before payday—wages, when payable.** Whenever any employee is separated from the employ of any such employer, then all the unpaid wages of such employee shall become due and payable within three (3) days, either through the regular pay channels or by mail if requested by the employee; provided however, that where an employer's payroll checks originate at an office outside the state of Montana the time provided herein for payment of wages shall be extended for three (3) additional days.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967.

Amendments

The 1967 amendment rewrote this section. For previous text, see parent volume.

41-1304. (3087) **Period within which employee may recover penalties.** Any employee may recover all such penalties as are provided for the violation of section 41-1302, which have accrued to him, at any time within eighteen (18) months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1973.

Amendments

The 1973 amendment extended the time for recovery of penalties from six months to eighteen months.

41-1306. (3089) **Judgment for wages shall include attorney's fee.**

Failure To Include in Memorandum

Award of attorney fees was proper in employee's action to recover for services rendered as bookkeeper under an implied contract, even though not included in plaintiff's memorandum of costs, since the award was made directly to attorney. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

41-1314.1. Enforcement. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967.

Title of Act

An act amending sections 41-1302 and 41-1303, R. C. M. 1947, relating to time for payment of wages; authorizing the commissioner of labor to investigate violations; and authorizing said commissioner to accept assignments of wage claims and institute proceedings to enforce such claims.

41-1314.2. Authority to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee, and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceeding, including attorneys' fees. If the proceeding is maintained by the commissioner, no court costs or fees shall be required of him, nor shall he be required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

The commissioner is authorized to issue, amend, and enforce rules and regulations for the purpose of carrying out the provisions of the act.

History: En. Sec. 4, Ch. 40, L. 1967.

41-1325. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-3555. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-3555.

CHAPTER 14—EMPLOYMENT AGENCIES, REGULATION

Section 41-1417. Short title.
41-1418. Definitions.
41-1419. Records to be kept—contents—examination by director.
41-1420. Contract—contents—applicant entitled to copy.
41-1421. Director's approval required before using contract—No fee for referral to state employment office or hiring hall.
41-1422. Bona fide request from employer required before sending applicant for interview.
41-1423. Administration by director—rules and regulations—powers.
41-1424. Conducting business without license a misdemeanor.
41-1425. Bond of licensee—cash deposit.
41-1426. Application for license—contents.
41-1427. Expiration of license.
41-1428. Director's consent necessary before transferring license—changes in management.
41-1429. Grounds for denial, suspension, or revocation of license.
41-1430. License fees.
41-1431. When can agency charge fee from applicant.
41-1432. Return of excessive fees.
41-1433. Additional regulatory rules.
41-1434. Reference to prosecuting officials for enforcement.
41-1435. Written assurance of discontinuance.
41-1436. Civil penalty for violating court order.
41-1437. Jurisdiction over nonresidents.
41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees.

41-1401 to 41-1416. (4157 to 4172) **Repealed.**

Repeal

Sections 41-1401 to 41-1416 (Secs. 1 to 16, Ch. 225, L. 1919), relating to employment agencies, were repealed by Sec. 23, Ch. 430, Laws 1971.

41-1417. Short title. This act shall be known and cited as "The Employment Agency Act."

History: En. Sec. 1, Ch. 430, L. 1971.

Title of Act

An act replacing chapter 14, Title 41, R. C. M. 1947, concerning the regulation of private employment agencies including provision for penalties for the violation of such regulations.

41-1418. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business's gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring or attempting to procure employment for applicants; or

(b) The giving of information regarding where and from whom employment may be obtained.

In addition, the term "employment agency" shall mean and include any person, bureau, organization or school which for profit, by advertise-

ment or otherwise; offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. The term "employment agency" shall not include labor union organizations, temporary service contractors proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant," except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, partnership or association.

(6) "Director" shall mean the commissioner of the department of labor and industries.

History: En. Sec. 2, Ch. 430, L. 1971.

41-1419. Records to be kept — contents — examination by director. Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant.

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulations adopted by the director, such records shall be maintained for a period of three (3) years from the date in which they are made.

History: En. Sec. 3, Ch. 430, L. 1971.

41-1420. Contract—contents—applicant entitled to copy. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) The name, address, and telephone number of the employment agency;

(2) Trade name if any;

(3) The date of the contract;

(4) The name of the applicant;

(5) The amount of the fee to be charged the applicant;

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through (name of employment agency) you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: En. Sec. 4, Ch. 430, L. 1971.

41-1421. Director's approval required before using contract—No fee for referral to state employment office or hiring hall. Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, misrepresentative or attempts to charge an unreasonable fee or is in violation of this act. No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: En. Sec. 5, Ch. 430, L. 1971.

41-1422. Bona fide request from employer required before sending applicant for interview. No employment agency shall send any applicant on an interview with a prospective employer without first having obtained, either orally or in writing, a bona fide request from such employer for the interview.

History: En. Sec. 6, Ch. 430, L. 1971.

41-1423. Administration by director—rules and regulations—powers. [1] The director shall administer the provisions of this act and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this act.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this act.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any

employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

History: En. Sec. 7, Ch. 430, L. 1971.

41-1424. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this act.

History: En. Sec. 8, Ch. 430, L. 1971.

41-1425. Bond of licensee—cash deposit. Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars ($2,000) running to the state of Montana, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this act or of any rule or regulation adopted by the director pursuant to section 7 [41-1423] (1) of this act.

In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: provided, however, if the license applicant has filed a cash deposit, the director shall deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or saving and loan association and shall pay annually to the depositor the interest derived from such account.

History: En. Sec. 9, Ch. 430, L. 1971.

41-1426. Application for license—contents. (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty per cent (20%) interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) All applications for employment agency licenses shall be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971.

41-1427. Expiration of license. An employment agency license shall expire June 30.

History: En. Sec. 11, Ch. 430, L. 1971.

41-1428. Director's consent necessary before transferring license—changes in management. No license granted pursuant to this act shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein.

History: En. Sec. 12, Ch. 430, L. 1971.

41-1429. Grounds for denial, suspension, or revocation of license. The director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five (5) years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving willful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this act, or failed to comply with any rule or regulation issued by the director pursuant to this act.

History: En. Sec. 13, Ch. 430, L. 1971.

41-1430. License fees. The following fees shall be charged by the director to those parties licensed as employment agencies: original applications, one hundred dollars ($100); renewal per year, one hundred dollars ($100); branch license, both original and renewal, one hundred dollars ($100); transfer of license, twenty-five dollars ($25); approval of amended or new contracts, fifteen dollars ($15) per contract.

History: En. Sec. 14, Ch. 430, L. 1971.

41-1431. When can agency charge fee from applicant. No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as

specified in section 4 [41-1420] of this act, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

History: En. Sec. 15, Ch. 430, L. 1971.

41-1432. Return of excessive fees. Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this act or to the rules or regulations adopted pursuant to this act shall return the excessive portion of the fee within seven (7) days after receiving a demand therefor from the director.

History: En. Sec. 16, Ch. 430, L. 1971.

41-1433. Additional regulatory rules. In addition to the other provisions of this act the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation;

(5) No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment, if such licensee has knowledge that such condition exists;

(6) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(7) When an applicant is referred to the same position by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the specific opening: provided, that he has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within ten (10) days of such contract.

History: En. Sec. 17, Ch. 430, L. 1971.

41-1434. Reference to prosecuting officials for enforcement. The director may refer such evidence as may be available to him concerning

violations of this act or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this act.

History: En. Sec. 18, Ch. 430, L. 1971.

41-1435. Written assurance of discontinuance. In the enforcement of this act, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this act. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971.

41-1436. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this act, shall forfeit and pay a civil penalty of not more than two thousand dollars ($2,000). For the purpose of this section the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties.

History: En. Sec. 20, Ch. 430, L. 1971.

41-1437. Jurisdiction over nonresidents. Personal service of any process in an action under this act may be made upon any person outside the state if such person has engaged in conduct in violation of this act which conduct has had impact in this state which this act reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: En. Sec. 21, Ch. 430, L. 1971.

41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees. (1) The provisions of this act relating to the regulation of private employment agencies shall be exclusive.

(2) This act shall not be construed to affect or reduce the authority of any political subdivision of the state of Montana to provide for the licensing of private employment agencies solely for revenue purposes.

(3) All license fees shall revert to department of labor and industry to be used for administration of this act.

History: En. Sec. 22, Ch. 430, L. 1971.

Repealing Clause

Section 23 of Ch. 430, Laws 1971 read "Chapter 14, Title 41, R. C. M. 1947, is hereby repealed."

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath.

41-1601. Department of labor and industry created.

Cross-References

Department abolished and functions transferred, sec. 82A-1002(1).

41-1603. Commissioner of labor and industry—term—salary—oath. The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973.

Amendments

The 1963 amendment substituted a provision for a maximum salary of $7,500 for a provision fixing the salary at $6,000.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the first sentence; and deleted "and execute an official bond in the amount of one thousand dollars ($1,000)" from the end of the section.

The 1967 amendment substituted the second, third and fourth sentences for a provision in the former section fixing the maximum salary at $7,500; and made minor changes in punctuation and phraseology.

The 1973 amendment deleted "section 1, article XIX of" before "the Montana constitution" at the end of the section.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Commissioner continuing as head of new department, sec. 82A-1001.

41-1607, 41-1608. Repealed.

Repeal

Sections 41-1607 and 41-1608 (Secs. 9, 10, Ch. 177, L. 1951; Sec. 12, Ch. 80, L. 1961), relating to the annual report of the department of labor and industry were repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

41-1609. Repealed.

Repeal

Section 41-1609 (Sec. 12, Ch. 177, L. 1951), relating to legislative intent in separating the departments of agriculture and labor and industry, was repealed by Sec. 58, Ch. 100, Laws 1973.

CHAPTER 17—SAFETY CODES

Section 41-1708. Short title.
41-1709. Definitions.
41-1710. Employers to furnish and require safety devices and practices.
41-1711. Employer's duty to provide and maintain safe place of employment.
41-1712. Removal or refusal to use safety devices prohibited.
41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers.
41-1714. Compelling witnesses to appear in response to subpoena—contempt.
41-1715. Board's power to prescribe safety devices and fix and order safety standards.
41-1716. Notice of hearing on rules and codes.
41-1717. Order directing additions, repairs, and improvements.
41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized.
41-1719. Time allowed for compliance with order.
41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.
41-1721. Judicial review of board's orders, rules or decisions.
41-1722. Application for rehearing of order, decision, or rule of board.
41-1723. Application for rehearing — contents — waiver — copies to adverse parties—procedure where no adverse parties.
41-1724. Resolution of issues on rehearing—notice—disposition.
41-1725. Periodic inspections of hazardous places of employment—report.
41-1726. Workmen to notify employers of safety violations—complaint to board—investigation.
41-1727. Code-making power.
41-1728. Variations.
41-1729. General research and review powers of board—Power to appoint advisers.
41-1730. Violation of safety provision—misdemeanor.
41-1731. Public contractors subject to act.
41-1732. Effect on existing structures and equipment.
41-1733. Occupational health hazards.

41-1701 to 41-1707. Repealed.

Repeal

Sections 41-1701 to 41-1707 (Secs. 1 to 6, 8, Ch. 193, L. 1951), relating to safety codes of the industrial accident board, were repealed by Sec. 30, Ch. 341, Laws 1969. For present provisions see sec. 41-1708 et seq.

41-1708. Short title. This act may be cited as the "Montana Safety Act."

History: En. Sec. 1, Ch. 341, L. 1969.

Title of Act

An act to provide a safety code for the state of Montana, establishing a department of safety, providing for a safety director to be appointed by the industrial accident board, providing that the industrial accident board have supervision over every place of employment and full power to enforce all laws and orders concerning safety in places of employment, prescribing methods for enforcement and administration of this act; amending section 92-101, R. C. M. 1947; and repealing sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947.

41-1709. Definitions. Unless context requires otherwise, in this act:

(1) "Board" means the industrial accident board of the state of Montana.

(2) "Employer" is defined as in section 92-410, R. C. M. 1947.

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the board under the provisions of this act.

(4) "Employee" and "workmen" are defined as in section 92-411, R. C. M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969.

Compiler's Notes

Section 92-410, referred to in subdivision (2), was repealed by Sec. 2, Ch. 154, Laws 1973. For new law, see sec. 92-410.1.

Cross-References

Board abolished and functions transferred, sec. 82A-1005(1).

41-1710. Employers to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render the place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: En. Sec. 3, Ch. 341, L. 1969.

Liability for Violation

Employee of general contractor expanding paper company's facilities was properly denied right to introduce testimony, in suit against paper company, respecting minimum safety standards for construction industry as promulgated by state industrial accident board since paper company's right to oversee and co-ordinate work of independent contractors did not impose duty on company to ensure that contractor's work would be done in compliance with all various safety codes. Hackley v. Waldorf-Horner Paper Products Co., 149 M 286, 425 P 2d 712.

41-1711. Employer's duty to provide and maintain safe place of employment. An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

Every employer who is the owner of a place of employment or lessee thereof, shall repair, and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969.

41-1712. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy or carry off or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: En. Sec. 5, Ch. 341, L. 1969.

41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers. In the administration of this act the board:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall establish a department of safety under the supervision of a safety director, to be appointed by the board, to carry out the provisions of this act. The safety director shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May make, establish, promulgate and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the board shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

41-1714. Compelling witnesses to appear in response to subpoena—contempt. (1) The board or any member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the board.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why he has not attended and testified or produced the papers before the board or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the board or member thereof, the court thereupon shall enter

an order that the witness appear before the board or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969.

41-1715. Board's power to prescribe safety devices and fix and order safety standards. The board may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969.

DECISIONS UNDER FORMER LAW

Employee of Independent Contractor Neither city nor its supervising engineer had duty running to employee of independent contractor doing work for city to see that contractor complied with minimum safety standards as it had specifically agreed to do. Wells v. Stanley J. Thill & Associates, Inc., 153 M 28, 452 P 2d 1015.

41-1716. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the board shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the board may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the board after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969.

41-1717. Order directing additions, repairs, and improvements. Whenever the board, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed

or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The board may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order.

History: En. Sec. 10, Ch. 341, L. 1969.

41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized. (1) The board or authorized representative thereof with the approval of the board, or the safety director, upon finding any violation of any duly promulgated safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the board, or who fails or refuses to file a report of accident as required by section 92-808, R. C. M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars ($1,000). The civil penalty may be imposed and collected by the board in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs workmen. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the board within twenty (20) days after entry of such order. The board shall then affirm, modify or re-

voke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

In addition to all other remedies provided in this act, the board may bring an action to enjoin any violation of any duly promulgated safety order, code or rule.

History: En. Sec. 11, Ch. 341, L. 1969.

41-1719. Time allowed for compliance with order. The board shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the board for an extension of time, which the board shall grant if it finds the extension of time necessary.

History: En. Sec. 12, Ch. 341, L. 1969.

41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety. The board or authorized representative thereof, with the approval of the board, or the safety director, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workmen employed therein. Upon issuance of any such order, the board or safety director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order. Nothing in this section shall empower the safety director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the safety director that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen there employed, the safety director may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the board.

History: En. Sec. 13, Ch. 341, L. 1969.

41-1721. Judicial review of board's orders, rules or decisions. (1) The orders of the board, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the board and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the board. Within ten (10) days after the receipt of the notice, the board shall file with the clerk of court the record of proceedings before the board, including a transcript of all the evidence adduced upon the hearing and any rehearing before the board. The district court, on application for good cause shown, may extend the time within which the board shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the board.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The board acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969.

41-1722. Application for rehearing of order, decision, or rule of board. Any party aggrieved directly or indirectly by any final order, decision or rule of the board made or entered pursuant to this act may apply to the board within twenty (20) days after the order of the board for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act.

History: En. Sec. 15, Ch. 341, L. 1969.

41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the board.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the board may require the application for rehearing to be served on such parties as may be designated by the board.

History: En. Sec. 16, Ch. 341, L. 1969.

41-1724. Resolution of issues on rehearing—notice—disposition. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the board, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the board shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the board may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the board shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the board shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the board.

(5) An application for rehearing is considered denied by the board unless it has been acted upon within thirty (30) days from the date of filing; provided that the board may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days.

History: En. Sec. 17, Ch. 341, L. 1969.

41-1725. Periodic inspections of hazardous places of employment—report. (1) The board shall inspect from time to time all the places of employment defined in the Montana Workmen's Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the board and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the

board, or by the board or a member of the board in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969.

41-1726. Workmen to notify employers of safety violations—complaint to board—investigation. (1) A workman shall notify his employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the workman.

(2) If the employer fails to remedy the violation, the workman may complain in writing to the board of the violation.

(3) Upon receiving the complaint the board shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969.

41-1727. Code-making power. (1) In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the board may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the board shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969.

41-1728. Variations. Any employer may consult with the board for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the board may grant variations from particular provisions of the code and permit the

use of other or different devices or methods; provided, however, that such variations shall be granted only when it is clear that the reasonable safety of the workers in said plant or place of employment is not thereby endangered. In any case where the board shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the board and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969.

41-1729. General research and review powers of board—power to appoint advisers. The board may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the board if necessary, and who shall assist the board in establishing standards of safety. The board may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969.

41-1730. Violation of safety provision—misdemeanor. In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969.

41-1731. Public contractors subject to act. Every contractor performing services for the state of Montana or any political subdivision thereof, shall be required to comply with the safety rules, codes and provisions of this act, as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969.

41-1732. Effect on existing structures and equipment. Nothing contained in this act shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to the effective date of this act, and provided that replacements and alterations shall conform to all provisions of this act.

History: En. Sec. 25, Ch. 341, L. 1969.

Compiler's Notes

Chapter 341, Laws 1969 took effect July 1, 1969.

41-1733. Occupational health hazards. The board shall report occupational health hazards discovered in its investigations and inspection of places of employment to the state board of health and shall co-operate with the state board of health in carrying out its duties as specified in Title 69, chapter 42, R. C. M. 1947.

History: En. Sec. 26, Ch. 341, L. 1969.

Separability Clause

Section 27 of Ch. 341, Laws 1969 read "If any of the provisions of this act are declared or held to be invalid or unconstitutional, such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid."

CHAPTER 19—WINTER WORK PROGRAMS

Section 41-1901. Definition of terms.
41-1902. Municipal winter work committees authorized—composition and appointment of members.
41-1903. Terms of work committee members—no compensation.
41-1904. Meetings and officers of work committee.
41-1905. Promotion of winter work program.
41-1906. State employment service to co-operate.
41-1907. Minutes of work committee filed—availability to legislators.

41-1901. Definition of terms. As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965.

Title of Act

An act concerning a winter work program.

41-1902. Municipal winter work committees authorized—composition and appointment of members. The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965.

41-1903. Terms of work committee members—no compensation. Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965.

41-1904. Meetings and officers of work committee. The committee shall meet within ten (10) days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter,

the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. State employment service to co-operate. The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. Minutes of work committee filed—availability to legislators. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

Section 41-2001. Short title.
41-2002. Bond required of lessee.
41-2003. Purpose of act.
41-2004. Definition of terms.
41-2005. Bond to be filed by lessee—amount—ownership affidavit.
41-2006. Time of filing of bond—terms of bond—maintenance of bond required.
41-2007. Liability of lessor and lessee for unpaid wages.
41-2008. Lessee's business enjoined until bond filed.
41-2009. Certification of lessee on filing of bond.
41-2010. New or additional bond—sureties.
41-2011. Disposition of fees.

41-2001. Short title. This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. Bond required of lessee. From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, where the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 5 [41-2005] of this act.

History: En. Sec. 2, Ch. 155, L. 1965.

41-2003. Purpose of act. The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns employed under the circumstances of ownership of the equipment, appliances and other accessories as outlined in section 2 [41-2002] of this act and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees.

History: En. Sec. 3, Ch. 155, L. 1965.

41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning: (1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessor" means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease.

(4) "Lessee" means one to whom a lease is made.

(5) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(6) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1 %) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(7) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4 %) alcohol by weight.

(8) "Employee" means a person who works for wages or salary in the service of an employer.

(9) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(10) "Equipment" means the articles, furnishings, supplies and apparatus used in a business.

(11) "Appliances" means all devices and apparatus used in the conduct of business.

(12) "Accessories" means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business.

History: En. Sec. 4, Ch. 155, L. 1965.

41-2005. Bond to be filed by lessee—amount—ownership affidavit. Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern, or who

leases equipment, appliances or accessories for such purpose, is hereby required to file a bond equal to at least double the amount of the semi-monthly payroll with the commissioner of labor and industry and an affidavit showing the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein.

History: En. Sec. 5, Ch. 155, L. 1965.

41-2006. Time of filing of bond—terms of bond—maintenance of bond required. The bond and affidavit required by section 5 [41-2005] of this act shall be filed with the commissioner of labor and industry by July 1 and February 1 of each year. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee therein as provided in section 9 [41-2009] of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 2 [41-2002] of this act the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees.

History: En. Sec. 6, Ch. 155, L. 1965.

41-2007. Liability of lessor and lessee for unpaid wages. Upon non-payment of wages, if no bond has been filed as provided for in this act, the employees of the lessee may recover from either the lessor or lessee who shall be jointly and severally liable in accordance with the provisions of sections 41-1302 and 41-1306, Revised Codes of Montana, 1947.

History: En. Sec. 7, Ch. 155, L. 1965.

41-2008. Lessee's business enjoined until bond filed. If any person engages in the restaurant, bar or tavern business, as lessee, without having first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

History: En. Sec. 8, Ch. 155, L. 1965.

41-2009. Certification of lessee on filing of bond. Upon filing a bond as required by section 5 [41-2005] of this act and after payment of two ($2) dollars, as application fee, the commissioner of labor and industry shall issue to the lessee applying a certificate stating that the lessee is duly bonded and entitled to conduct a restaurant, bar or tavern business in the state of Montana.

History: En. Sec. 9, Ch. 155, L. 1965.

41-2010. New or additional bond—sureties. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965.

41-2011. Disposition of fees. All fees and moneys collected pursuant to section 9 [41-2009] of this act shall be credited to a special account to be known as the restaurant, bar and tavern employees wage protection fund, and shall be used by the commissioner of labor and industry to carry out the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1965.

Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 21—LABOR SAFETY STUDY COMMISSION

Section 41-2101. Intent and purpose of act.
41-2102. Appointment of commission—scope of work.
41-2103. Composition of commission.
41-2104. Distribution of proposed changes to industry and legislature.
41-2105. Legislative adoption required.
41-2106. Employment of secretary and research services by commission.
41-2107. Reimbursement of commission members.
41-2108. Adoption of rules—records.

41-2101. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the laws of Montana for the purpose of governing the safety provisions in places of employment and to regulate the conduct of the employer-employee relationship in matters pertaining to safety in order to insure, as much as possible, safe places of employment and to protect and preserve the physical health and well-being of employees and to endeavor to cut down employee accidents and to revise and modernize the safety laws in order to promote safety in employment and speedy, effective and economical ways of administering such laws.

History: En. Sec. 1, Ch. 323, L. 1967.

Title of Act

An act authorizing and empowering the commission of labor of the state of Montana to recommend changes in the laws of Montana relating to safety codes, safety positions, and general safety laws; creating a commission to prepare suggested changes in safety laws and propose new laws and propose new recommendations as to the position of safety; prescribing the membership and the powers and duties of said commission; providing for the employment of a secretary-stenographer of the commission and employment of research facilities, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

Cross-References

Commission abolished, sec. 82A-1010 (1).

41-2102. Appointment of commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly, the governor of the state of Montana shall appoint a commission of eight (8) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and prepare suggested changes in the safety codes of Montana.

History: En. Sec. 2, Ch. 323, L. 1967.

41-2103. Composition of commission. The commission shall be composed of the commissioner of labor as its chairman, two representatives to be selected from industry, two representatives to be selected from labor, the chairman of the industrial accident board, or his designated representative, a member of the medical profession, and a member of the bar association of Montana.

History: En. Sec. 3, Ch. 323, L. 1967.

41-2104. Distribution of proposed changes to industry and legislature. The commission so appointed shall prepare its suggested changes as well as to distribute copies to industry and labor for their consideration and suggestions as they may submit to the commission. Such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

History: En. Sec. 4, Ch. 323, L. 1967.

Cross-References

Montana Safety Act, sec. 41-1708 et seq.

41-2105. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 5, Ch. 323, L. 1967.

41-2106. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 6, Ch. 323, L. 1967.

41-2107. Reimbursement of commission members. Members of said commission shall serve without compensation but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 7, Ch. 323, L. 1967.

41-2108. Adoption of rules—records. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 8, Ch. 323, L. 1967.

Separability Clause

Section 9 of Ch. 323, Laws 1967 read "If any sentence, section, clause, or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 10 of Ch. 323, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 323, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

CHAPTER 22—NURSES—EMPLOYMENT PRACTICES

Section 41-2201. Purpose of act.
41-2202. Definitions.
41-2203. Improper employment practices.
41-2204. Bargaining units—determination by mutual consent or application to board.
41-2205. Proof of status as bargaining unit.
41-2206. Determination of question on status of bargaining unit—petition—election—redetermination.
41-2207. Duties of board relating to bargaining unit determinations.
41-2208. Proceedings to restrain improper employment practices—other relief—appeal.
41-2209. Unlawful strikes.

41-2201. Purpose of act. The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969.

Title of Act

An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered professional and licensed practical nurses employed in health care facilities; establishing procedures for developing employment standards; providing rule-making authority to the state board of health.

41-2202. Definitions. As used in this act, unless the context clearly requires otherwise:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications, determined pursuant to section 4 [41-2204] of this act.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home, or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Board" or "board of health" means the state board of health.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility as defined in section 2 [subdivision (3) of this section] of this act, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969.

41-2203. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969.

41-2204. Bargaining units—determination by mutual consent or application to board. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969.

41-2205. Proof of status as bargaining unit. An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of section 3 [41-2203] of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

History: En. Sec. 5, Ch. 320, L. 1969.

41-2206. Determination of question on status of bargaining unit—petition—election—redetermination. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 [41-2204] of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 [41-2203] of this act.

(3) A determination under this section remains in effect for at least one (1) year and until either the health care facility or an employee organization shall apply for a redetermination.

History: En. Sec. 6, Ch. 320, L. 1969.

41-2207. Duties of board relating to bargaining unit determinations. The board of health may: (1) Set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under subsection 2, section 4 [41-2204], or subsection 1, section 6 [41-2206] of this act.

(2) Determine, on its own motion, by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units. When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification. The health care facility or employee organization may, within thirty (30) days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification and hearing shall be held on such petition.

(3) Adopt and promulgate rules and regulations as to times and places for hearing and notice thereof so as to provide adequate notice and opportunity to be heard to all interested parties; as to elections; and so as to carry into effect the provisions of this act.

History: En. Sec. 7, Ch. 320, L. 1969.

Cross-References

Board functions transferred to department of labor and industry, sec. 82A-1003 (1).

41-2208. Proceedings to restrain improper employment practices—other relief—appeal. The board of health, a health care facility or an employee organization qualified to apply for an election under section 6 [41-2206] of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 [41-2203] of this act or appeal from any determination by the board. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief, or, on appeal, adjudicate whether the board has acted in abuse of discretion or upon arbitrary or discriminatory rules or regulations, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969.

41-2209. Unlawful strikes. It shall be unlawful for any employee of a health care facility as defined in section 2 [41-2202] of this act to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility as defined in section 2 [41-2202] of this act or their duly elected representative must give the health care facility thirty (30) days written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969.

Separability Clause

Section 10 of Ch. 320, Laws 1969 read "This act shall be severable, and should any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof."

CHAPTER 23—MINIMUM WAGES AND HOURS

Section 41-2301. Declaration of policy.
41-2302. Definitions.
41-2303. Compensation.
41-2304. Exclusions.
41-2305. Regulations.
41-2306. Enforcement.
41-2307. Provisions cumulative.

41-2301. Declaration of policy. It is declared to be the policy of this act (1) to establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the

health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and (3) to sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971.

Title of Act

An act to establish minimum wages and hours for employees in the state of Montana; delegating to the commissioner of labor the duty of administering the act; and providing enforcement.

Constitutionality

This act does not violate the due process clause because of vagueness, does not constitute an unlawful delegation of legislative or judicial power, and meets the constitutional requirement that the subject of an act be clearly expressed in its title. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

41-2302. Definitions. (a) As used in this act, "commissioner" means the commissioner of labor and industry.

(b) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under section 5 [41-2305] of this act. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided however, that in no case shall such inclusion exceed an amount equal to forty per cent (40%) of the total wage paid by such employer to such employee.

(c) "Employ" means to suffer or permit to work.

(d) "Employee" includes any individual employed by an employer.

(e) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(f) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(g) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

History: En. Sec. 2, Ch. 417, L. 1971.

41-2303. Compensation. (a) Except as may otherwise be provided pursuant to this act, every employer shall pay to each of his employees wages at a rate not less than one dollar sixty cents ($1.60) an hour, save and except for farm workers as herein defined and students employed at an amusement or recreational establishment that operates on a seasonal basis, who shall be compensated at not less than the following rates, exclusive of gratuities:

(1) one dollar twenty cents ($1.20) an hour for the first year from the effective date of this act.

(2) one dollar forty cents ($1.40) an hour for the second year from the effective date of this act.

(3) one dollar sixty cents ($1.60) an hour for the third year from the effective date of this act and thereafter.

(b) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-½) times the hourly wage rate at which he is employed. No overtime provision shall apply for farm workers. Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging or other facilities shall not employ said students for a work week longer than forty-eight (48) hours, unless such students receive compensation for their employment in excess of forty-eight (48) hours in a work week at a rate of not less than one and one-half (1-½) times the hourly wage rate at which they are employed.

(c) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of eight hours per day and other seasonal periods requiring working hours substantially less than eight hours per day the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to: (1) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him. The total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked, or (2) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(a) two hundred eighty dollars ($280) a month for the first year from the effective date of this act,

(b) three hundred twenty-five dollars ($325) a month for the second year from the effective date of this act,

(c) three hundred seventy-five dollars ($375) a month for the third year from the effective date of this act.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973.

Amendments

The 1973 amendment inserted "exclusive of gratuities" at the end of the preliminary paragraph of subsection (a).

Public Officers and Employees

Provisions of this act and the provision dictating that county commissioners fix the salaries of deputies (25-604) are in conflict and the special act prevails over the general provisions of this act. Because a maximum is provided by section 25-604, the time-and-a-half for overtime hours in excess of 40 hours per week is unenforceable. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

41-2304. Exclusions. The provisions of section 41-2303 of this act shall not apply with respect to:

(a) Students participating in a distributive education program established under the auspices of an accredited educational agency.

(b) Persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks.

(c) Persons employed directly by the head of a household to care for children dependent upon the head of the household.

(d) Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a "dependent."

(e) Any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis.

(f) Handicapped workers (1) engaged in work which is incidental to training or evaluation programs or (2) whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

(g) Apprentices or learners who may be exempted by the commissioner for a period not to exceed thirty (30) days of their employment.

(h) Learners under the age of eighteen (18) who are employed as farm workers, provided that such exclusion shall not exceed a period of one hundred eighty (180) days from their initial date of employment and, further provided that during this exclusion period wages paid such learners may not be less than fifty per cent (50%) of the minimum wage rate established in this act.

(i) Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch.

(j) Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner.

(k) Any individual employed by the United States of America.

History: En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the age specified near the beginning of subdivision (h) from 19 to 18 years.

Law Enforcement Officers

Subdivision (j) was not intended by the legislature to include policemen, firemen, and deputy sheriffs within the terms of "bona fide executives, administrative, or professional capacity." City of Billings v. Smith, 158 M 197, 490 P 2d 221.

41-2305. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner who shall thereupon set such matter for hearing in the county of residence of such protestant within thirty (30) days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: En. Sec. 5, Ch. 417, L. 1971.

41-2306. Enforcement. Enforcement of this act shall be treated as a wage claim action and shall be in accordance with sections 41-1301 through 41-1324, R. C. M. 1947, as amended. The commissioner may enforce this act without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973.

Amendments

The 1973 amendment added the second sentence.

41-2307. Provisions cumulative. The provisions of this act shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries, but shall not apply to employees covered by the Fair Labor Standards Act.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973.

Amendments

The 1973 amendment repeated this section without change.

Effective Date

Section 4 of Ch. 363, Laws 1973 read "This act shall become effective on January 1, 1974."

CHAPTER 24—EMPLOYMENT OF WOMEN

Section 41-2401. Policy.
41-2402. Functions of department of labor and industry.
41-2403. Rules of procedure and practice.

41-2401. Policy. This act establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973.

Title of Act

An act providing procedures within the department of labor and industry that will enable women to reach their fullest potential of service and contribution to society.

41-2402. Functions of department of labor and industry. The department of labor and industry shall:

(1) Conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislative assembly.

(2) Direct public attention to critical employment problems confronting women as wives, mothers, homemakers and workers.

(3) Serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters.

(4) Co-operate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state.

(5) Conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs and services available to them.

(6) Serve as the central, permanent agency for the co-ordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services.

(7) Encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs.

(8) Apply for and receive grants, appropriations or gifts from any federal, state or local agency, private foundation, or individual to carry out the purposes of this act.

History: En. Sec. 2, Ch. 466, L. 1973.

41-2403. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act [82-4201 to 82-4225] in order to administer and carry out the purposes of this act.

History: En. Sec. 3, Ch. 466, L. 1973.

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 1—HIRING—IN GENERAL

42-105. (7734) Must repair injuries, etc.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

42-109. (7738) When hiring terminates.

Destruction of Subject Matter

Lessee of logging skidder which burned was not liable to lessor for remaining monthly rentals after insurance proceeds for fair market value of skidder had been paid to lessor. American Mach. Co. v. Johnson, 157 M 226, 483 P 2d 921.

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-201. (7741) Lessor to make dwelling house fit for its purpose.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. Enott v. Hinkle, 140 M 206, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the ten-

ancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action could not be maintained by landlord. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

Tenancy from Year to Year

Where property was hired for meat business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first giving notice thirty days prior to the anniversary date of the tenancy. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

Chapter 1. Senatorial, representative and congressional districts, 43-106.6 to 43-106.9, 43-107 to 43-118.
2. The legislative assembly—its composition, organization, officers and employees, 43-205, 43-206.1 to 43-208, 43-210.1, 43-215 to 43-218.
3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310, 43-310.1, 43-319 to 43-325.
5. Statutes—their enactment and operation—governor's approval or veto, 43-501, 43-502, 43-504, 43-505, 43-508.
7. Legislative council, 43-709 to 43-711.5, 43-712 to 43-719.
8. Lobbying, 43-803.
9. Legislative proceedings—dissemination, 43-901, 43-902.
10. Fiscal notes in legislative bills, 43-1001 to 43-1006.
11. Legislative fiscal review committee, 43-1101 to 43-1108.

CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

Section 43-106.6. Number of senators—senatorial districts and apportionment.
43-106.7. Number of representatives—representative districts and apportionment.
43-106.8. Division of multi-member districts into single-member districts.
43-106.9. Adjustment of senatorial terms.
43-107. Congressional districts.
43-108. Decennial selection of reapportionment commission.
43-109. Appointment of commissioners.
43-110. Vacancy.
43-111. Compensation of reapportionment commissioners.
43-112. Technical and clerical services for commission.
43-113. Co-operation of state agencies.
43-114. Public hearing on reapportionment plan.
43-115. Time for submission of plan.
43-116. Legislative recommendations.
43-117. Filing of final plan—dissolution of commission.
43-118. Commissioners ineligible for legislative office.

43-101 to 43-106. (42 to 47) Repealed.

Repeal

These sections (Secs. 110 to 112, Pol. C. 1895; Sec. 2, Ch. 38, L. 1911; Sec. 1, Ch. 6, L. 1921; Sec. 2, Ch. 192, L. 1921; Sec. 1, Ch. 144, L. 1939; Secs. 1 to 4, Ch. 37, L. 1941; Secs. 1, 2, Ch. 191, L. 1951; Secs. 1, 2, Ch. 233, L. 1961), relating to apportionment of legislative representation, were repealed by Sec. 13, Ch. 194, Laws 1967.

43-106.1, 43-106.2. Repealed.

Repeal

Sections 43-106.1, 43-106.2 (Secs. 1, 2, Ch. 194, L. 1967), relating to legislative apportionment, were repealed by Sec. 5, Ch. 3, Ex. Laws 1971 and by Sec. 6, Ch. 8, 2nd Ex. Laws 1971.

43-106.3 to 43-106.5. Unconstitutional.

Unconstitutional

These sections (Secs. 1, 2, 4, Ch. 3, 1st Ex. L. 1971) were held unconstitutional by a three-judge federal court in a decision rendered on June 11, 1971, in Wold v. Anderson, 327 F Supp 1342. See annotation following sec. 43-106.6.

43-106.6. Number of senators—senatorial districts and apportionment. The senate of the legislative assembly shall consist of fifty (50) members.

The senatorial districts and the number of senators elected from each district are as follows:

Senatorial District Number	Number of Senators	District consists of County or Counties
1	1	Big Horn, Powder River, Carter, less Ekalaka census enumerator division of Carter
2	1	Custer and Ekalaka census enumerator division of Carter
3	2	Richland, Dawson, Wibaux, Fallon
4	2	Sheridan, Roosevelt, Daniels and Valley less the Fort Peck and Hinsdale census enumerator divisions of Valley
5	1	Blaine, Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley
6	1	Garfield, Rosebud, McCone, Prairie and Treasure
7	1	Stillwater, Carbon and south of the Yellowstone census enumerator division of Sweet Grass
8	6	Yellowstone less the Buffalo Creek census enumerator division, the Shepherd enumerator division and the Huntley Project census enumerator division
9	1	Meagher, Wheatland, Golden Valley, Musselshell and north of the Yellowstone census enumerator division of Sweet Grass and Buffalo Creek census enumerator division and Huntley Project enumerator division of Yellowstone and Shepherd division of the census enumerator of Yellowstone
10	1	Fergus and Petroleum
11	3	Gallatin and Park
12	3	Broadwater, Jefferson and Lewis and Clark
13	6	Cascade
14	2	Hill, Chouteau, Judith Basin and Liberty
15	2	Glacier, Toole, Pondera, Teton
16	3	Flathead
17	1	Lake

Senatorial District Number	Number of Senators	District consists of County or Counties
18	4	Missoula less Bonner-Clinton census enumerator division of Missoula
19	2	Powell, Deer Lodge, Granite and Bonner-Clinton census enumerator division of Missoula
20	3	Silver Bow
21	1	Madison and Beaverhead
22	1	Ravalli
23	2	Mineral, Sanders and Lincoln

History: En. Sec. 1, Ch. 8, 2nd Ex. L. 1971.

Title of Act

An act to apportion the legislative assembly according to the 1970 federal census; and repealing sections 43-106.1 and 43-106.2, R. C. M. 1947.

Constitutionality

The reapportionment plan contained in secs. 43-106.6 to 43-106.9 does not violate the equal protection clause of the federal constitution. Wold v. Anderson, 335 F Supp 952.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Former sections 43-101 to 43-105 were unconstitutional in that they violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Herweg v. Thirty-Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

Former sections 43-106.3 to 43-106.5, enacted pursuant to guidelines established in Herweg v. Thirty-Ninth Legislative Assembly, which contained population deviations of 37% from the smallest to the largest senatorial district and 23% from the smallest to the largest representative district, violated the equal protection clause of the fourteenth amendment to the United States constitution. Wold v. Anderson, 327 F Supp 1342.

43-106.7. Number of representatives—representative districts and apportionment. Representatives of the legislative assembly shall consist of one hundred (100) members. The representatives elected from each district are as follows:

Representative District Number	Number of Representatives	District consists of County or Counties
1	2	Big Horn, Powder River, Carter less Ekalaka census enumerator division of Carter
2	2	Custer and Ekalaka census enumerator division of Carter
3	4	Richland, Dawson, Wibaux, and Fallon
4	4	Sheridan, Roosevelt, Daniels and Valley, less the Fort Peck and Hinsdale census enumerator divisions of Valley

Representative District Number	Number of Representatives	District consists of County or Counties
5	2	Blaine, Phillips and the Fort Peck and Hinsdale census enumerator divisions of Valley
6	2	Garfield, Rosebud, McCone, Prairie and Treasure
7	2	Stillwater, Carbon and south of the Yellowstone census enumerator division of Sweet Grass
8	12	Yellowstone less the Buffalo Creek census enumerator division, the Shepherd enumerator division and the Huntley Project census enumerator division
9	2	Meagher, Wheatland, Golden Valley, Musselshell and north of the Yellowstone census enumerator division of Sweet Grass and Buffalo Creek census enumerator division and Huntley Project enumerator division and Shepherd division of the census enumerator of Yellowstone
10	2	Fergus and Petroleum
11	6	Gallatin and Park
12	6	Broadwater, Jefferson and Lewis and Clark
13	12	Cascade
14	4	Hill, Chouteau, Judith Basin and Liberty
15	4	Glacier, Toole, Pondera, Teton
16	6	Flathead
17	2	Lake
18	8	Missoula less Bonner-Clinton census enumerator division of Missoula
19	4	Powell, Deer Lodge, Granite and Bonner-Clinton census enumerator division of Missoula
20	6	Silver Bow
21	2	Madison and Beaverhead
22	2	Ravalli
23	4	Mineral, Sanders and Lincoln

History: En. Sec. 2, Ch. 8, 2nd Ex. L. 1971.

43-106.8. Division of multi-member districts into single-member districts. A multi-member district may be divided into single-member districts within a senatorial district in the following manner:

(1) Eight per cent (8%) of the registered voters of the multi-member district as determined by the last registration lists applicable to the counties in such multi-member districts must first petition and said petition shall substantially meet all of the requirements of a petition for initiative and referendum as provided in sections 37-101, 37-102 and 37-103, R. C. M. 1947, for such division. If the multi-member district is located within a single county, the petition signed by the required number of voters shall be filed with the clerk and recorder of that county. If the multi-member district embraces areas in more than one (1) county, the required petition shall be filed in the office of the clerk and recorder of any county embraced in whole or in part in the district and certified copies of such petition shall be sent by that clerk and recorder to the clerks and recorders of all other counties embraced in whole or in part in such multi-member districts.

(2) The clerks and recorders with whom such petitions, whether originals or certified copies, are filed shall as promptly as possible examine such petition as to the signatures thereon which are of residents of their respective counties and shall certify to the clerk and recorder of the county in which the original petition was filed as to the number of valid signatures on said petition as to the number of registered voters in their respective counties and included within the multi-member district. The clerk and recorder with whom the original petition was filed shall also as promptly as possible examine the petition as to the signatures thereon which are of residents of his county and shall determine the number of valid signatures as to his county. Upon receipt of the certificates of the other clerks and recorders, the clerk and recorder with whom the original petition was filed shall total the number of valid signatures on said petition and, if such petition contains valid signatures of at least eight per cent (8%) of the registered voters of the multi-member district, he shall so certify to the county commissioners of each county affected in whole or in part.

(3) The county commissioners of each county affected in whole or in part, upon receipt of the certification by the clerk and recorder, shall meet together as promptly as possible and shall establish a time of election, at which shall be presented the question whether the district shall be divided into single-member districts.

(4) If a majority of the voters voting at such election shall vote in favor of dividing the multi-member district, the county commissioners of the affected counties shall meet together as promptly as possible after the results of such election have been certified, and shall divide the multi-member district into single-member districts. Any such plan of division shall require the approval of the majority of the commissioners of each of the counties affected.

(5) Single-member districts shall be as compact as possible, comprise contiguous territory and shall be as nearly equal as practicable in popula-

tion. Boundaries of the single-member districts shall follow the census enumerator division lines.

History: En. Sec. 3, Ch. 8, 2nd Ex. L. 1971.

43-106.9. Adjustment of senatorial terms. The senators shall be elected for the term of four (4) years and they shall be divided into two (2) classes with terms concluding in alternate bienniums. The terms of office of those senators in districts 8, 13, 16, 17, 18, 20, 21 and 22 will continue as they presently exist, and they will run for re-election upon expiration of their present terms of office. The terms of office of all other senators will expire on the first Monday of January, 1973.

The senators elected in districts 1, 2, 5 and 6 shall be elected for a term of four (4) years. The senators elected in districts 3, 4, 11, 12, 14, 15, 19 and 23 shall, pursuant to the regulations to be promulgated by the secretary of state, draw lots for the purpose of determining which of said elected senators of said districts shall serve for four (4) years and which shall serve for two (2) years to the end that in each of the said districts, in so far as possible, one-half (½) of the senators shall serve for four (4) years and one-half (½) for two (2) years; provided, however, that in districts 11 and 12 the senators there elected shall draw lots to determine which one of the three in each district shall be subject to the drawing hereinafter mentioned.

The remaining senators from districts 11 and 12 shall themselves draw lots to determine which shall serve for four (4) years and which shall serve for two (2) years. The names of elected senators from districts 7, 9 and 10 including the one (1) from each of districts 11 and 12, aforesaid, shall be placed in a receptacle from which the secretary of state shall draw three (3) names. The senators whose names are thus drawn shall serve for four (4) years and the remainder not drawn shall serve for two (2) years.

History: En. Sec. 4, Ch. 8, 2nd Ex. L. 1971.

Separability Clause

Section 5 of Ch. 8, 2nd Ex. Laws 1971 read "If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."

Repealing Clause

Section 6 of Ch. 8, 2nd Ex. Laws 1971 read "Sections 43-106.1 and 43-106.2, R. C. M. 1947, are repealed."

Effective Date

Section 7 of Ch. 8, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 29, 1971.

43-107. (48) Congressional districts. The counties of Beaverhead, Broadwater, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow, Glacier, Toole, Liberty, Pondera, Meagher, and Park shall constitute the first congressional district of the state. The counties of Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith

Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Teton, Treasure, Valley, Wheatland, Wibaux and Yellowstone shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

History: Ap. p. Sec. 120, Pol. C. 1895; re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1917; re-en. Sec. 48, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1945; amd. Sec. 1, Ch. 124, L. 1967; amd. Sec. 1, Ch. 187, L. 1971.

Amendments

The 1967 amendment deleted preliminary and generalized descriptions of the districts; and transferred Glacier, Toole, Liberty, Pondera, Teton, Meagher and Park counties from the second congressional district to the first congressional district.

The 1971 amendment transferred Teton County from the first congressional district to the second congressional district.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Section 43-107, prior to the 1967 amendment, was unconstitutional in that it violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Herweg v. Thirty-Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

43-108. Decennial selection of reapportionment commission. During the 1973 legislative session and in each session preceding each federal population census, a commission of five (5) citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

History: En. Sec. 1, Ch. 21, L. 1973.

Title of Act

An act implementing article V, section 14 of the 1972 Montana constitution by providing for a districting and apportionment commission; and providing for an immediate effective date.

43-109. Appointment of commissioners. The majority and minority leaders of each house shall each designate one (1) commissioner. Two commissioners must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within twenty (20) days after their designation, the four (4) commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four (4) members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

History: En. Sec. 2, Ch. 21, L. 1973.

43-110. Vacancy. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 21, L. 1973.

43-111. Compensation of reapportionment commissioners. Commissioners are entitled to compensation of twenty dollars ($20) per day plus

travel and actual expenses while attending commission meetings or in carrying out the official duties of the commission.

History: En. Sec. 4, Ch. 21, L. 1973.

43-112. Technical and clerical services for commission. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

History: En. Sec. 5, Ch. 21, L. 1973.

43-113. Co-operation of state agencies. Upon request state agencies shall co-operate with the commission and furnish technical assistance and consulting personnel.

History: En. Sec. 6, Ch. 21, L. 1973.

43-114. Public hearing on reapportionment plan. Before the commission submits its plan to the legislature, it shall hold at least one (1) public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

History: En. Sec. 7, Ch. 21, L. 1973.

43-115. Time for submission of plan. The first commission shall submit its plan to the 1974 legislature by the tenth legislative day; each subsequent commission shall submit its plan to the legislature by the tenth legislative day of the first regular session after its appointment or after the census figures are available.

History: En. Sec. 8, Ch. 21, L. 1973.

43-116. Legislative recommendations. Within thirty (30) days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

History: En. Sec. 9, Ch. 21, L. 1973.

43-117. Filing of final plan—dissolution of commission. Within thirty (30) days after receiving the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

History: En. Sec. 10, Ch. 21, L. 1973.

43-118. Commissioners ineligible for legislative office. A member of the commission may not run for election to a legislative seat within two (2) years after the districting and apportionment plan in which he participated becomes effective.

History: En. Sec. 11, Ch. 21, L. 1973.

Effective Date

Section 12 of Ch. 21, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 8, 1973.

CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section 43-205. Time and place of meeting.
43-206.1. Rosters prepared from election records.
43-207. Senate, organization of.
43-208. House of representatives, organization of.
43-210.1. Tie votes in organizing.
43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.
43-216. Alternate method of selection—failure of one candidate to receive majority vote.
43-217. "Vacancy" defined.
43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses.

43-203, 43-204. (53, 54) **Repealed.**

Repeal

These sections (Secs. 153, 154, Pol. C. 1895), relating to the election of senators, were repealed by Sec. 13, Ch. 194, Laws 1967.

43-205. (55) **Time and place of meeting.** Each session of the legislative assembly shall meet at the seat of government, at twelve (12) noon, on the first Monday except when it is January 1st, then they shall meet on the first Wednesday of January of each year, and at other times when convened by the governor or by a written request of a majority of the members or, when the legislative assembly is in session, by a recorded vote of a majority of the members.

History: En. Sec. 160, Pol. C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R. C. M. 1921; amd. Sec. 1, Ch. 279, L. 1973. Cal. Pol. C. Sec. 235.

Amendments

The 1973 amendment inserted "except when it is January 1st, then they shall meet on the first Wednesday"; substituted "of each year" for "1897, and each alternate year thereafter"; added the clauses providing for convening on written request or recorded vote of the members; and made minor changes in phraseology.

43-206. (56) **Repealed.**

Repeal

Section 43-206 (Sec. 1, p. 89, L. 1885; Sec. 161, Pol. C. 1895), making certificate of election prima facie evidence of right to seat, was repealed by Sec. 4, Ch. 18, Laws 1969.

43-206.1. Rosters prepared from election records. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969.

Title of Act

An act to provide that the secretary of state shall prepare a certified roster to be used in the organization of both houses of the legislature; amending sections 43-207 and 43-208, R. C. M. 1947, and repealing section 43-206, R. C. M. 1947.

43-207. (57) **Senate, organization of.** At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call

the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election, and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H. B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1969. Cal. Pol. C. Sec. 238.

Amendments

The 1969 amendment inserted "call over * * * secretary of state" after "to order," substituted "from the certified * * * and counties" for "call over the senatorial districts" after "and then," substituted "after the same are called" for "as the same are called," before "the members-elect," and deleted "present their certificates" before "take the constitutional oath of office."

43-208. (58) House of representatives, organization of. At the time specified in section 43-207, the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts; and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1969. Cal. Pol. C. Sec. 239.

Amendments

The 1969 amendment inserted "from the certified * * * secretary of state" after "and then," substituted "after the same" for "as the same" before "are called," and deleted "present their certificates" before "take the constitutional oath of office."

Repealing Clause

Section 4 of Ch. 18, Laws 1969 read "Section 43-206, R. C. M. 1947, is repealed."

43-210.1. Tie votes in organizing. In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

History: En. Sec. 1, Ch. 25, L. 1973.

Title of Act

An act to designate the president of the senate or the speaker of the house of representatives should there occur a tie vote for the purposes of organizing either house.

43-211 to 43-214. (61 to 64) Repealed.

Repeal

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939; Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting. When a vacan-

cy occurs, in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting.

History: En. Sec. 1, Ch. 179, L. 1967.

Title of Act

An act to provide that vacancies in either house of the legislative assembly shall be filled by the board or boards of county commissioners of the county or counties concerned.

Preamble

Chapter 179, Laws 1967, contained a preamble reading: "Whereas, section 45, Article V of the Montana Constitution, which provides for the filling of vacancies in the legislative assembly has been repealed by an amendment to the Montana Constitution adopted by the electorate at the November 8, 1966 general election."

43-216. Alternate method of selection—failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967.

43-217. "Vacancy" defined. For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

History: En. Sec. 3, Ch. 179, L. 1967.

43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses. As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislative assembly are elected, the majority and minority parties of each house of the legislative assembly shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees, except senators elected at the general election held in 1968, shall receive twenty dollars ($20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties. Per diem and expenses shall be paid by the state controller from the appropriation for operation of the preceding legislative assembly.

History: En. Sec. 2, Ch. 274, L. 1969.

Compiler's Notes

Section 23-1814, referred to as amended in the Title of Chapter 274, Laws 1969, was repealed by Sec. 248, Ch. 368, Laws 1969 and no specific amendment of the section appeared in the text of the former Act.

Title of Act

An act to fix the mileage paid legislators traveling to and from sessions and provide that holdover senators, senators-elect, and representatives-elect of the majority and minority parties shall receive mileage for travel to and from the presession caucuses; to provide for a presession caucus; to provide that members appointed at the caucus to the house appropriations and the senate finance and claims committee shall begin reviewing money requests immediately; to provide that members of these committees, except senators elected at the general election held in 1968, shall receive $20 per diem for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties, all per diem and expense payments to be paid by the state controller from the appropriation for operation of the preceding legislative assembly; and to change the state canvass date to permit a caucus December 1 or earlier; amending sections 23-1814 and 43-310, R. C. M. 1947.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem, mileage and expenses of members.
43-310.1. Salary when legislature not in session.
43-319. Special session convened by governor or majority of members.
43-320. Legislative call of future special session while legislature is in session.
43-321. Request to poll legislators on special session.
43-322. Legislators' ballots to vote on special session.
43-323. Legislative call of immediate special session.
43-324. Notice of date special session is to convene.
43-325. Effect of failure to approve special session.

43-302, 43-303. (66, 67) Repealed.

Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the engrossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) Per diem, mileage and expenses of members. (1) Legislators are entitled to compensation of twenty dollars ($20) per legislative day, payable weekly, during a session of the legislature, and twelve cents (12¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the shortest regularly traveled automobile route.

(2) Members are also entitled to thirty-three dollars ($33) per day, seven (7) days a week payable weekly during a legislative session, as reimbursement for expenses incurred in attending the session. Expense payments shall stop when the legislature recesses for more than three (3) days and shall resume when the legislature reconvenes.

(3) While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairman of the legislative council during the legislative interim, legislators are entitled to

(a) a mileage allowance of twelve cents (12¢) per mile for each mile of travel,

(b) actual expenses, and

(c) compensation of twenty dollars ($20) per day.

(4) Legislators are also entitled to a mileage allowance of twelve cents (12¢) per mile for travel to and from their respective pre-session caucus meeting.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973. Cal. Pol. C. Sec. 266.

Amendments

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

The 1969 amendment made subsection (1) provisions applicable to holdover members of the legislature and increased mileage allowance from eight to nine cents per mile, and added subsection (3).

The 1971 amendment increased the reimbursement for expenses specified in subsection (2) from $15.00 to $25.00 per day.

The 1973 amendment increased the mileage rate from nine cents to twelve cents per mile in subsection (1); increased the per diem rate from $25.00 to $33.00 per day, made the per diem rate applicable seven days per week, and added the second sentence to subsection (2); rewrote subsection (3); added subsection (4); and made minor changes in style and phraseology.

Effective Dates

Section 2 of Ch. 4, Laws 1971 read "This bill shall be effective for the Forty-Second Legislative Assembly and all sessions thereafter."

Section 2 of Ch. 72, Laws 1973 read "The rates of per diem, mileage and expenses provided for in this act shall be applicable from and after January 1, 1973."

Section 3 of Ch. 72, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 27, 1973.

Temporary Provision

Chapter 1, Laws of 1973, prescribed the duties and compensation of officers and employees of the Forty-Third Legislative Assembly.

43-310.1. Salary when legislature not in session. Salary compensation paid to members of the legislature for performance of their official duties when the legislature is not in session shall be computed in the same manner as per diem is computed under section 59-539.

History: En. Sec. 1, Ch. 224, L. 1973.

Title of Act

An act providing that compensation for legislators when engaged in official business during an interim period is computed in quarters of days.

43-312 to 43-317. (76 to 78.3) Repealed.

Repeal

These sections (Secs. 222, 223, Pol. C. 1895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch. 37, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 112, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec. 2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-319. Special session convened by governor or majority of members. The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

History: En. Sec. 1, Ch. 433, L. 1973.

Title of Act

An act implementing article V, section 6 of the 1972 Montana constitution by creating procedures which enable the legislature to call itself into special session; and providing for an immediate effective date.

43-320. Legislative call of future special session while legislature is in session. When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

History: En. Sec. 2, Ch. 433, L. 1973.

43-321. Request to poll legislators on special session. When the legislature is not in session, any ten (10) members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session. The request must state:

(1) the conditions warranting the call of a special session;

(2) the purposes of the special session; and

(3) the proposed convening date and time of the special session.

History: En. Sec. 3, Ch. 433, L. 1973.

43-322. Legislators' ballot to vote on special session. Within five (5) days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

(1) the names of the legislators making the request;

(2) the reasons for calling the special session;

(3) the purposes of the special session;

(4) the requested convening date and time of the special session;

(5) the date by which legislators must return the ballot which may not be more than thirty (30) days after the date of the mailing of the ballots; and

(6) a stamped return envelope.

History: En. Sec. 4, Ch. 433, L. 1973.

43-323. Legislative call of immediate special session. When ten (10) legislators consider an immediate special session necessary, they may request the secretary of state to notify each legislator by the fastest available means. The notification shall include the names of the legislators making the request, the conditions which necessitate the call, and the proposed date and time of convening. Each legislator shall send a letter to the secretary of state approving or rejecting the call for a special session. The letter is a legal ballot.

History: En. Sec. 5, Ch. 433, L. 1973.

43-324. Notice of date special session is to convene. If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

History: En. Sec. 6, Ch. 433, L. 1973.

43-325. Effect of failure to approve special session. If a majority of the legislators fail to approve the call for a special session within thirty (30) days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

History: En. Sec. 7, Ch. 433, L. 1973.

Effective Date

Section 8 of Ch. 433, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION—GOVERNOR'S APPROVAL OR VETO

Section 43-501. Bills received by the governor, how endorsed.
43-502. Approval of bills, line item and amendatory vetoes.
43-504. Return when legislature not in session.
43-505. Bills remaining with the governor.
43-508. "Final passage," meaning of.

43-501. (84) **Bills received by the governor, how endorsed.** Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, initiative and referendum measures, shall be submitted to the governor for his signature. Each bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this _____ day of _____, 19 ____." The endorsement must be signed by an assistant authorized by the governor, or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1973. Cal. Pol. C. Sec. 309.

Amendments

The 1973 amendment inserted a new first sentence; substituted "an assistant authorized by the governor" in the final sentence for "the private secretary of the governor"; and made a minor change in phraseology.

43-502. (85) **Approval of bills, line item and amendatory vetoes.** (1) When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state.

(2) If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and his objections thereto. The governor must transmit to the house in which the bill originated (or to the secretary of state if the

legislature is not in session) a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

(3) The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(e) The governor may not return the bill for amendment a second time.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1973. Cal. Pol. C. Sec. 310.

Amendments

The 1973 amendment divided the former section into subsections (1) and (2); deleted "if the legislative assembly be in session," and inserted the parenthetical phrase in the last sentence of subsection (2); and added subsection (3).

43-504. (87) **Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature.

(3) The legislature may reconvene to reconsider any bill so vetoed by using the statutory procedure provided for convening in special session.

History: En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1973. Cal. Pol. C. Sec. 312.

Amendments

The 1973 amendment designated the former provisions as subdivision (1); and added new subdivisions (2) and (3).

43-505. (88) **Bills remaining with the governor.** Every bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days after its delivery to him if the legislature is in session or within twenty-five (25) days if the legislature is adjourned, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor five (5) days, and the legislature being in session, it has become a law this _____ day of _____, A. D. _____," or "This bill having remained with the governor twenty-five (25) days, and the legislature being adjourned, it has become a law this _____ day of _____, A. D. _____," which certificate must be signed by the secretary of state and deposited with the laws in his office.

History: En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1973. Cal. Pol. C. Sec. 313.

Amendments

The 1973 amendment substituted "legislature" for "legislative assembly" in the first sentence; inserted "after its delivery to him if the legislature is in session or within twenty-five (25) days if the legislature is adjourned" in the preliminary clause; deleted "(Sundays excepted)" after "five (5) days" in the form; inserted the alternative certification by the secretary of state in the event of the legislature's adjournment; and made minor changes in style.

Repealing Clause

Section 2 of Ch. 30, Laws 1973 read "Section 43-506, R. C. M. 1947, is repealed."

43-506. (89) **Repealed.**

Repeal

Section 43-506 (Sec. 275, Pol C. 1895), relating to the effect of final adjournment on bills, was repealed by Sec. 2, Ch. 30, Laws 1973. For new law, see sec. 43-505.

43-508. (91) **"Final passage," meaning of.** The words "final passage," as used in the preceding section, shall be held to mean the enactment into law of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in the constitution.

History: En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R. C. M. 1921; amd. Sec. 20, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "section 12 of article VII of" before "the constitution" at the end of the section.

43-514. (97) **Repeal of laws creating criminal offenses, etc.**

Constitutionality

This section is to be interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, in absence of an express legislative intent to contrary contained in repealing act, irre-

spective of whether charges are filed before or after such repeal; such interpretation does not violate article III, section 11 of constitution as ex post facto legislation. State ex rel. Huffman v. District Court, 154 M 201, 461 P 2d 847.

CHAPTER 7—LEGISLATIVE COUNCIL

Section 43-709. Legislative council—members—term—vacancies.
43-710. Powers and duties.
43-711. Executive director—personnel—standing and select committees.
43-711.1. Printing of the house and senate journals and session laws.
43-711.2. Distribution of senate and house journals and session laws.
43-711.3. Publication of laws—index.
43-711.4. Description of county boundaries included in session laws.
43-711.5. Expenses incurred, how paid.
43-712. Power to investigate and examine.
43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings.
43-714. Expenses.
43-715. Organization—officers—rules of procedure and records.
43-716. Appointment of subcommittees—composition—functions—resignation for failure to attend meetings or hearings.
43-717. Legislative committee on priorities—composition—functions.
43-718. Activities of committees while legislature not in session.
43-719. Determination of actions of standing committees by committee on priorities.

43-709. Legislative council — members — term — vacancies. There is hereby created a legislative council which consists of four (4) members of the house of representatives who shall be appointed by the speaker of the house of representatives, with the advice of the majority and minority leaders of the house no more than two (2) of whom shall be of the same political party, and four (4) members of the state senate who shall be appointed by the committee on committees of the state senate, no more than two (2) of whom shall be of the same political party. Membership on the council shall be for two (2) years and terminates with appointment of a new council or on the fiftieth legislative day of the first regular session following the biennium in which the appointment was made, whichever event occurs first. A new council shall be appointed no later than the fiftieth day of each succeeding first regular session. Any vacancy on said legislative council occurring when the legislature is not in session shall be filled by the selection of another member by the same method as the original appointment.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973.

Amendments

The 1973 amendment reduced the number of council members from six to four for each house; preserved the even division of party membership; inserted "with the advice of the majority and minority leaders of the house" in the clause relating to appointment of house members; deleted a second sentence relating to time of appointment of the first members; advanced the time for selection of members from the sixtieth to the fiftieth legislative day; provided for termination of membership on the fiftieth legislative day or on the appointment of a new council, rather than December 31 or the termination of a term of office; provided for the filling of vacancies "by the same method as the original appointment" rather than by the remaining members of the council; and made minor changes in arrangement and phraseology.

43-710. Powers and duties. (1) If a question of state-wide importance arises when the legislature is not in session and a subcommittee

has not been appointed to consider the question, the legislative council shall, with the concurrence of the priorities committee, assign such question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing and select committee and subcommittee report.

History: En. Sec. 2, Ch. 34, L. 1957; amd. Sec. 2, Ch. 431, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

43-711. Executive director — personnel — standing and select committees. (1) The legislative council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of standing and select committee and subcommittee reports and recommendations, proposed legislative acts and any other activities and shall fix the compensation of such employees. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

(2) The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule, and shall include the following:

(a) Legislative services division;

(i) engrossing and enrolling,

(ii) mailroom,

(iii) printing;

(b) Research and reference services division;

(i) general and specialized legislative research,

(ii) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage,

(iii) committee staffing when the legislature is not in session;

(c) Legal services division;

(i) bill drafting,

(ii) legal counseling;

(d) Management and business services division;

(i) maintain bookkeeping records,

(ii) sign claims and payrolls,

(iii) order all printing, supplies, and equipment,

(iv) serve house and senate during the session.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973.

Amendments

The 1973 amendment divided the section into numbered subsections; substituted "standing and select committee and subcommittee reports and recommendations" for "its recommendations" in the first sentence of subsection (1); and substituted a new subsection (2) for a paragraph authorizing the appointment and providing for the work of special committees.

43-711.1. Printing of the house and senate journals and session laws. In addition to the duties prescribed in section 43-711, the legislative services division of the legislative council shall deliver to the printer entitled to the same, at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions, and journals, kept, passed, or adopted at such session, with proper indexes to the same.

History: En. 43-711.1 by Sec. 3, Ch. 96, L. 1973.

Title of Act

An act to amend sections 82-2202, 82-2203, 82-2208, 82-2211 and 82-2212, R. C. M. 1947, to transfer the functions of the secretary of state relating to printing and distribution of the house and senate journals and session laws to the legislative services division of the legislative council; deleting from section 82-2210, R. C. M. 1947, references to sidenoting; repealing section 82-2204, R. C. M. 1947.

43-711.2. (135) Distribution of senate and house journals and session laws. Immediately after the senate and house journals and the session laws mentioned in section 43-711.1 are bound, the legislative services division of the legislative council must distribute the same.

It shall distribute the house and senate journals as follows:

1. To the county clerk of each county one copy of each for the use of the county.

2. To the state historical library such number of copies of both, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange; to the state law librarian, two copies of each for the use of said library, and such additional copies as may be necessary for the purposes of exchange; and to the library of Congress, two copies of each.

3. To the lieutenant governor, each member of the legislative assembly, secretary of the senate and chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

It shall distribute the session laws as follows:

1. To each department of the government at Washington, and of the government of this state, one copy.

2. To the library of Congress, eight copies; and to the state library, two copies.

3. To the state historical and miscellaneous library, two copies; to the state law librarian, four copies for the use of said state law library.

4. To the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries.

5. To the members of Congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of the state, one copy.

6. To the lieutenant governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state and to each unit of the state university and institutions, one copy; to the law librarian of the state of Montana as many copies as may be required by him for exchange with libraries and institutions maintained by other states, territories and public libraries.

8. To the county clerk of each county, three copies for the use of the county.

9. To each county attorney, and to each clerk of the district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1929; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R. C. M. 1947; redes. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973.

Amendments

The 1973 amendment renumbered this section, which was formerly section 82-2203; substituted the legislative services division of the legislative council for the secretary of state; substituted the reference in the preliminary paragraph to section 43-711.1 for a reference to former subdivision 9 of section 82-2202; inserted "It shall distribute the house and senate journals as follows:" immediately before the first group of numbered paragraphs; and made minor changes in phraseology.

43-711.3. (142) Publication of laws—index. The legislative services division of the legislative council, in pursuance of section 43-711.1, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

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numbered from 1 upward, using Arabic numerals for such numbering, and it shall omit from the laws the statement "Senate Bill No. _____" and "House Bill No. _____" and hereafter reference to the laws of any legislative session may be made as follows: "Chapter _____ (giving number) of the laws of _____" (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in the office of the secretary of state, and the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amendments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The legislative services division of the legislative council shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been

amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index."

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1939; Sec. 82-2210, R. C. M. 1947; amd. Sec. 1, Ch. 59, L. 1973; redes. 43-711.3 and amd. by Sec. 5, Ch. 96, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 59, and once by Ch. 96. Neither amendatory act mentioned the other. Since Ch. 96 included the changes made by Ch. 59, the compiler has used the text of Ch. 96.

Amendments

Chapter 59, Laws of 1973, deleted from the second sentence a requirement that the laws be published "in such manner that each section shall have a side head or marginal summary"; and made a minor change in style.

Chapter 96, Laws of 1973, renumbered this section, which was formerly section 82-2210; made the same changes as did Ch. 59; substituted the legislative services division of the legislative council for the secretary of state at the beginning of the section and at the beginning of the last sentence; substituted the reference to section 43-711.1 near the beginning of the section for a reference to former subdivision 9 of section 82-2202; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 59, Laws 1973 read "Section 82-2204, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 59, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

Cross-References

Index to session laws, preparation, 44-411.

43-711.4. (143) Description of county boundaries included in session laws. It shall be the duty of the legislative services division of the legislative council to include in the published session laws of the state of Montana a description of the county boundaries of all new counties of the state of Montana created by petition and election, commencing with counties so created on and after January 1, 1921, inserting in each of said session laws such new counties as have been so created since the publication of the acts of the previous session.

History: En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R. C. M. 1921; Sec. 82-2211, R. C. M. 1947; redes. 43-711.4 and amd. by Sec. 6, Ch. 96, L. 1973.

Amendments

The 1973 amendment renumbered this section, which was formerly section 82-2211; substituted the legislative services division of the legislative council for the secretary of state; and made a minor change in phraseology.

43-711.5. (144) Expenses incurred, how paid. The expenses incurred by the legislative services division of the legislative council in carrying into effect the provisions of sections 43-711.1 to 43-711.4 inclusive must be paid out of any moneys specially appropriated for the purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R. C. M. 1921; Sec. 82-2212, R. C. M. 1947; amd. Sec. 30, Ch. 97, L. 1961; redes. 43-711.5 and amd. by Sec. 7, Ch. 96, L. 1973.

Amendments

The 1973 amendment renumbered this section, which was formerly section 82-2212; substituted the legislative services division of the legislative council for the secretary of state; and substituted the reference to sections 43-711.1 to 43-711.4 for a reference to sections 82-2202 to 82-2204.

Repealing Clause

Section 8 of Ch. 96, Laws 1973 read "Section 82-2204, R. C. M. 1947, is repealed."

43-712. Power to investigate and examine. The legislative council, on behalf of standing and select committees and subcommittees, shall have authority to investigate and examine into the costs of state governmental activities and may examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 4, Ch. 34, L. 1957; amd. Sec. 4, Ch. 431, L. 1973.

Amendments

The 1973 amendment inserted "on behalf of standing and select committees and subcommittees" near the beginning of the section.

43-713. Hearings—oaths, subpoenas, compelling attendance of witnesses and production of records—contempt proceedings. In the discharge of its duties on behalf of standing committees and subcommittees, the legislative council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued by the council on behalf of a standing committee or subcommittee or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative council to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 5, Ch. 34, L. 1957; amd. Sec. 5, Ch. 431, L. 1973.

Amendments

The 1973 amendment inserted "on behalf of standing committees and subcommittees" near the beginning of the first sentence; and substituted "subpoena issued by the council on behalf of a standing committee or subcommittee" in the second sentence for "subpoena issued on behalf of the council, or any committee thereof."

43-714. Expenses. When the legislature is not in session, members of the legislative council, the legislative subcommittees, select and standing committees, while going to, attending, and returning from legislative committee meetings and other necessary committee business authorized by the chairman of the legislative council are entitled to:

(1) a mileage allowance as allowed by law,

(2) actual expenses, and

(3) compensation as provided by law.

History: En. Sec. 6, Ch. 34, L. 1957; amd. Sec. 6, Ch. 431, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

43-715. Organization—officers—rules of procedure and records. The legislative council shall organize immediately following appointment by

electing one (1) of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council and the subcommittees are directed to keep accurate records of their activities and proceedings.

History: En. Sec. 7, Ch. 34, L. 1957; amd. Sec. 7, Ch. 431, L. 1973.

Amendments

The 1973 amendment substituted "immediately following appointment" for "within thirty (30) days after the passage and approval of this act" near the beginning of the first sentence; and substituted "the subcommittees" for "its committees" near the beginning of the last sentence.

43-716. Appointment of subcommittees — composition — functions — resignation for failure to attend meetings or hearings. (1) The standing committees of the house and senate shall appoint subcommittees from each body to meet jointly on those bills and resolutions as designated to them by the priorities committee. The subcommittees shall be composed as follows:

(a) four (4) members of the house standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party; and

(b) four (4) members of the senate standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party.

(2) The chairman of the standing committee may appoint himself to the subcommittee.

(3) The subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

(4) The subcommittees may perform their functions when the legislature is not in session and the personnel, data and facilities of the legislative council shall be made available to such subcommittees.

(5) The subcommittees shall accumulate, compile, analyze and furnish such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of consolidations of departments, commissions, boards and institutions in state government for the elimination of unnecessary activities and duplications in office personnel and equipment, for the co-ordination of activities, for the purpose of increasing efficiency of service or effecting economies, and for the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes, and all other matters pertaining to the function of all departments and branches of state government.

(6) The subcommittees shall prepare such bills and resolutions as in its opinion the welfare of the state may require for presentation to the next regular session of the legislative assembly.

(7) Any subcommittee appointed for the purpose of considering deferred bills may make recommendations regarding the disposition of such bills. Prior to the next session, these recommendations shall be submitted to the standing committee having jurisdiction over the bill when the preceding session was adjourned. After having considered the subcommittee recommendations the standing committee may perfect a committee report on the bill to be presented to the legislature on the first legislative day of the next session.

(8) Any subcommittee appointed for the purpose of making a study assigned by the priorities committee may make recommendations for legislation. These recommendations and the study report shall be submitted to the full joint standing committees prior to the legislative session in which the report is to be made for approval by the joint standing committee. The approved report and recommendations shall be made to the legislature at the session designated by the resolution or the priorities committee.

(9) If any subcommittee member should miss more than two (2) committee meetings or hearings without just cause when the legislature is not in session, the member is deemed to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973.

Title of Act

An act reducing the membership of the legislative council to eight (8) members and providing terms; providing for council organization, powers and duties; providing for appointment of subcommittees; providing for powers and duties of select and standing committees when the legislature is not in session; providing compensation for council members and committees; providing for a priorities committee to determine interim studies; and amending sections 43-709 through 43-715, R. C. M. 1947.

43-717. Legislative committee on priorities—composition—functions. (1) There is created a legislative committee on priorities which shall be composed of eight (8) members of the house rules committee, four (4) of whom shall be of the same political party, and eight (8) members of the senate rules committee, four (4) of whom shall be of the same political party.

(2) The committee on priorities shall be appointed at the same time as all other standing committees.

(3) The committee on priorities shall consider resolutions requesting council studies and all other study requests and establish and prepare a list of priorities from among them. They shall also set priorities on all bills and studies carried over to the second regular session. The committee shall transmit the list to the legislative council before the end of each regular session and shall assign the bills and studies to the appropriate standing committee in the order in which the studies and bills appear on the list of priorities. The committee shall assign as many studies and bills as the resources of the council staff allows.

History: En. 43-717 by Sec. 9, Ch. 431, L. 1973.

43-718. Activities of committees while legislature not in session. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees, and are empowered to continue to sit as such committees as provided in this act.

History: En. Sec. 10, Ch. 431, L. 1973.

43-719. Determination of actions of standing committees by committee on priorities. Before the close of any regular or special session of the biennium except for the last session of the biennium, the chairman of each standing committee shall designate to the committee on priorities the bills then pending before them. The committee on priorities shall determine whether such standing committee may act upon the legislation designated, and if the committee on priorities determines that the standing or select committee is not to act upon such legislation, it shall so inform the appropriate chairman, and that committee shall not then act upon such legislation. Such decisions of the committee on priorities shall be reported to the respective chairmen before the fifty-eighth legislative day of the first regular session, and the chairman of the select or standing committee involved may appeal the decision to the house of which he is a member, and if that house overturns the decision of the committee on priorities, the select or standing committee may act during the interim on the legislation in question.

History: En. Sec. 11, Ch. 431, L. 1973.

Effective Date

Section 12 of Ch. 431, Laws 1973 read "This act is effective upon its passage and approval, provided that in the first regular session of the 43rd legislative assembly the time limits referred to in this act shall not apply."

CHAPTER 8—LOBBYING

Section 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.

43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement. (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars ($10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall

be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The licensing authority may commence any such action on his own motion.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965.

Amendment

The 1965 amendment deleted "in a special fund to be known as the 'Lobby License Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION

Section 43-901. Definitions.
43-902. Schedule of fees.

43-901. Definitions. For the purposes of this act, the following definitions are adopted.

1. * * * [Same as parent volume.]

2. "Proceedings of the legislature" shall include status sheets, daily journal, reproduced bills, reproduced resolutions, reproduced memorials, printed bills, printed resolutions and printed memorials and amendments thereto.

3. "One complete set" is one copy of each item of the proceedings of the legislature.

History: En. Sec. 1, Ch. 223, L. 1959; amd. Sec. 1, Ch. 12, L. 1973.

Amendments

The 1973 amendment substituted "daily journal" in subdivision 2 for "status of proceedings"; substituted "reproduced" for "mimeographed" in three places in subdivision 2; and made a minor change in style.

Effective Date

Section 2 of Ch. 12, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved January 30, 1973.

43-902. Schedule of fees. (a). * * * [Same as parent volume.]

(b) In addition to the fee for each complete set of the proceedings specified by subsection (a) of this section, any person who requests that a set of the proceedings be mailed shall pay an additional fee to the secretary of state for each complete set that is mailed of seventy-five dollars ($75) if a person requests that the proceedings be mailed ordinary mail and one hundred dollars ($100) if a person requests that the proceedings be mailed air mail.

(c) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall pay to the clerk of the house of representatives or the secretary of the senate twenty-five cents ($.25) per single copy.

(d) Any person desiring to receive single copies of status sheets or status of proceedings shall first pay to the clerk of the house of representatives or the secretary of the senate ten cents (10¢) per single copy.

(e) The chief clerk of the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 p.m. each weekday. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day.

(f) The secretary of state shall account for all funds collected under this act and transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969.

Amendments

The 1967 amendment added a new subsection (b) and designated former subsections (b) through (e) as present subsections (c) through (f).

The 1969 amendment, in subsection (b), substituted "seventy-five dollars ($75)" for "fifty dollars ($50)," "ordinary" for "first class" before "mail," and "one hundred dollars ($100)" for "eighty dollars ($80)"; and, in subsection (c), deleted references to "mimeographed memorials" and "printed memorials."

Effective Dates

Section 2 of Ch. 14, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

Section 2 of Ch. 5, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.
43-1002. Budget director to prepare note.
43-1003. Note referred to committee—distribution to legislators on report of bill.
43-1004. Contents of fiscal notes.
43-1005. Note requested by committee or house.
43-1006. Background information available to legislators.

43-1001. Committee reports to include fiscal notes—need determined on introduction of bill. All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965.

Title of Act

An act requiring the inclusion of a fiscal note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

43-1002. Budget director to prepare note. The state budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days.

History: En. Sec. 2, Ch. 53, L. 1965.

43-1003. Note referred to committee—distribution to legislators on report of bill. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be mimeographed and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965.

43-1004. Contents of fiscal notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965.

43-1005. Note requested by committee or house. A fiscal note also may be requested on a bill by:

(1) A committee considering the bill, or

(2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; providing, however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day.

History: En. Sec. 5, Ch. 53, L. 1965.

43-1006. Background information available to legislators. The budget director shall make available on request to any member of the legislative assembly all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965.

CHAPTER 11—LEGISLATIVE FISCAL REVIEW COMMITTEE

Section 43-1101. Creation of committee—composition—appointments—vacancies.
43-1102. Duties of committee.
43-1103. Powers of committee.
43-1104. Investigation of costs of state government.
43-1105. Subpoena and related powers—contempt proceedings.
43-1106. Reimbursement for expenses—per diem.
43-1107. Officers—rules of procedure—meetings—records.
43-1108. Fiscal analyst and other necessary staff.

43-1101. Creation of committee—composition—appointments—vacancies. There is hereby created a legislative fiscal review committee which shall consist of four (4) members of the house of representatives appointed by the speaker, no more than two (2) of whom shall be of the same political party; and four (4) members of the senate appointed by the committee on committees, no more than two (2) of whom shall be of the same political party. The first members of the legislative fiscal review committee shall be appointed not later than the sixtieth (60th) legislative day of the forty-first (41st) legislative session. New members of the committee shall be appointed not later than the sixtieth (60th) legislative day of each succeeding session. Any vacancy occurring when the legislative assembly is not in session shall be filled by the selection of another member of the legislature by the remaining members of the committee.

History: En. Sec. 1, Ch. 376, L. 1969.

Title of Act

An act to create a legislative fiscal review committee for the study of state government fiscal matters; specifying an immediate effective date.

43-1102. Duties of committee. The legislative fiscal review committee shall accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state as the legislative assembly, or the committee by its own initiative, shall determine relevant to issues of policy and questions of state-wide importance, including, but not limited to, investigation and study of the possibilities of effecting economy and efficiency in state government. The committee may also conduct studies inquiring into the financial administration of state government and any of its agencies, including problems of assessment and collection of taxes, and all other matters pertaining to the fiscal functions of all agencies and branches of state government.

History: En. Sec. 2, Ch. 376, L. 1969.

43-1103. Powers of committee. The legislative fiscal review committee may:

(1) Employ the services of any research agency deemed necessary to the discharge of the committee's duties;

(2) Appoint special subcommittees composed of legislators, private citizens, or both to study and inquire into any specific governmental problems, however, the work of subcommittees shall be performed under the supervision of the committee;

(3) Estimate revenue from existing and proposed taxes;

(4) Review the executive budget and budget requests of each state agency and institution including proposals for the construction of capital improvements;

(5) Make recommendations it deems desirable to the legislative assembly;

(6) Assist committees of the legislative assembly, and individual legislators, in compiling and analyzing financial information.

History: En. Sec. 3, Ch. 376, L. 1969.

43-1104. Investigation of costs of state government. The legislative fiscal review committee has authority to investigate and examine into the costs of state government activities and may examine all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 4, Ch. 376, L. 1969.

43-1105. Subpoena and related powers—contempt proceedings. In the discharge of its duties, the legislative fiscal review committee shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law in civil actions in the district court. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the committee, or of the refusal of any witness to testify on any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative fiscal review committee, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify therein.

History: En. Sec. 5, Ch. 376, L. 1969.

43-1106. Reimbursement for expenses—per diem. Members of the legislative fiscal review committee and its subcommittees shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, and may also receive per diem payments as authorized by law.

History: En. Sec. 6, Ch. 376, L. 1969.

43-1107. Officers—rules of procedure—meetings—records. The legislative fiscal review committee shall organize within thirty (30) days after the passage and approval of this act by electing one (1) of its members as chairman and by the election of other officers from the membership of the committee as it may deem desirable. The committee is empowered to adopt rules of procedure and to make all arrangements for its meetings to carry out the purposes for which it is created. The

committee shall keep an accurate record of its activities and proceedings.

History: En. Sec. 7, Ch. 376, L. 1969.

43-1108. Fiscal analyst and other necessary staff. A fiscal analyst and other necessary staff shall be assigned to the committee by the legislative council. The council shall fix the salaries and define the duties of all the staff personnel.

History: En. Sec. 8, Ch. 376, L. 1969.

Effective Date

Section 9 of Ch. 376, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

TITLE 44—LIBRARIES

Chapter 1. The state library of Montana, 44-127, 44-131 to 44-139.
2. County, city and regional free libraries, 44-213, 44-214, 44-218 to 44-228.
3. City free public libraries, Repealed—Section 12, Chapter 260, Laws of 1967.
4. State law library, 44-403, 44-404, 44-410, 44-411.
5. Historical society—library and museum, 44-516 to 44-529.
6. Interstate library compact, 44-601, 44-602.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

Section 44-127. State library commission created.
44-131. Powers of state library commission.
44-132. Definitions.
44-133. Creation of distribution center—state library commission to make regulations.
44-134. Depositing of state agency publications—additional copies—interlibrary loan—sale publications.
44-135. Depository contracts—eligibility requirements—standards.
44-136. List of available publications.
44-137. State agency lists of current publications.
44-138. Restriction on general public distribution.
44-139. Exempt state agencies and officers.

44-127. (1575.1) **State library commission created.** A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their actual and necessary expenses.

History: En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965.

Amendment

The 1965 amendment deleted "as chairman" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

Cross-References

Commission continued in department of education, sec. 82A-509.

44-129, 44-130. (1575.3, 1575.4) **Repealed.**

Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

44-131. Powers of state library commission. The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians.

History: En. Sec. 2, Ch. 215, L. 1965.

Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state libary commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

Repealing Clause

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

44-132. Definitions. As used in this act:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical or magazine issued in print, or purchased for distribution, by the state, the legislature, constitutional officers, any state department, committee or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

History: En. Sec. 1, Ch. 261, L. 1967.

Title of Act

An act to create a state publications library distribution center as a division of the state library and amending section 82-1916, R. C. M. 1947, relating to printing and distribution of state reports and providing for reimbursement for additional publications.

44-133. Creation of distribution center—state library commission to make regulations. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment

of an orderly depository library system. To this end the state library commission shall make such rules and regulations necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 261, L. 1967.

44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications. Every state agency shall upon release deposit at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited, in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide inter-library loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required, where the quantity desired will necessitate additional printing or other expense to such agency.

History: En. Sec. 3, Ch. 261, L. 1967.

Cross-Reference

Printing and publications of state agencies and offices, sec. 82-1916.

44-135. Depository contracts — eligibility requirements — standards. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress and the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: En. Sec. 4, Ch. 261, L. 1967.

44-136. List of available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: En. Sec. 5, Ch. 261, L. 1967.

44-137. State agency lists of current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967.

44-138. Restriction on general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967.

44-139. Exempt state agencies and officers. This act shall not apply to nor affect the duties concerning publications distributed by, or officers of:

(1) The state law library;

(2) The secretary of state in connection with his duties under sections 12-317, 82-2202 (17) and 43-711.2, R. C. M. 1947.

History: En. Sec. 8, Ch. 261, L. 1967.

CHAPTER 2—COUNTY, CITY AND REGIONAL FREE LIBRARIES

Section 44-213. Participation of other governmental units.
44-214. Board of trustees—appointment and term.
44-218. Purpose of act in regard to free public libraries.
44-219. Establishing public library—resolution—petition—election.
44-219.1. Joint city-county library—expenses.
44-219.2. Board of trustees to govern city-county library—compensation—expenses.
44-220. Levying of tax—special library fund—payments upon order or warrant.
44-221. Board of trustees—appointment—composition of board—tenure.
44-222. Board of trustees—powers and duties.
44-223. Board of trustees—chief librarian—personnel—compensation.
44-224. Free use of library—exclusions—extending privileges.
44-225. Providing library services—co-operation and merging of boards, institutions and agencies.
44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.
44-227. "City" defined.
44-228. Continued existence of all public libraries.

44-201 to 44-210. (4563 to 4572) **Repealed.**

Repeal

These sections (Secs. 1 to 10, Ch. 45, L. 1915; Secs. 1 to 4, Ch. 137, L. 1917; Sec. 1, Ch. 56, L. 1923; Secs. 1 to 3, Ch. 202, L. 1943; Sec. 1, Ch. 14, L. 1949), relating to county and regional free libraries were repealed by Sec. 12, Ch. 260, Laws 1967.

44-213. Participation of other governmental units. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a

unit of the university of Montana is located for the establishment and operation of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963.

Amendment

The 1963 amendment added the third, fourth, and fifth sentences.

Effective Date

Section 2 of Ch. 249, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Cross-References

Board of regents to exercise powers and duties of state board of education, sec. 75-5617 (2).

44-214. Board of trustees—appointment and term. In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. Trustees shall serve no more than two full terms in succession.

History: En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967.

Amendments

The 1967 amendment added the last sentence.

44-216, 44-217. Repealed.

Repeal

These sections (Secs. 5, 6, Ch. 132, L. 1939), relating to tax levies and librarians for joint county or regional libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

44-218. Purpose of act in regard to free public libraries. It is the purpose of this act to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967.

Title of Act

An act providing for the creation, maintenance and operation of public libraries in counties and cities and repealing sections 44-201, 44-202, 44-203, 44-204, 44-205, 44-206, 44-207, 44-208, 44-209, 44-210, 44-216, 44-217, 44-301, 44-302, 44-303 and 11-704, R. C. M. 1947; amending section 44-214, R. C. M., 1947.

44-219. Establishing public library — resolution — petition — election. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a

resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) Upon a petition being filed with the governing body and signed by not less than five per centum (5%) of the resident taxpayers of any city or county requesting an election the governing body shall submit to a vote of the qualified electors thereof, at the next general election, the question of whether a free public library shall be established. If such a petition is submitted for a city or town, the petition must be signed by resident taxpayers of said city or town. If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city or town located in said county which may already have established a free public library for such city or town.

If such petition specifically asks that a special election be called, and such petition is signed by thirty-five per centum (35%) of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

If at such election, a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library, or to contract with any city or county for library service to be rendered to the inhabitants of such city, town or county.

History: En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969.

Amendments

The 1969 amendment substituted "any" for "either" in the introductory sentence and added subdivision (3).

44-219.1. Joint city-county library—expenses. A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties. The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract. The governing body of any city or county entering into a contract may levy a special tax as provided in section 44-220 for the establishment and operation of a joint city-county library. The treasurer

of the county, or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library. The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

History: En. Sec. 1, Ch. 273, L. 1973.

Title of Act

An act to provide for the establishment and operation of a joint city-county library; and providing an effective date.

44-219.2. Board of trustees to govern city-county library—compensation—expenses. A joint city-county library shall be governed by a board of trustees composed of five (5) members chosen as specified in the contract, with terms not to exceed five (5) years. Trustees shall serve no more than two (2) full terms in succession. Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall meet and elect a chairman, and such other officers as they deem necessary, for one (1) year terms. The board of trustees shall have the power and duties as specified in sections 44-213 through 44-225.

History: En. Sec. 2, Ch. 273, L. 1973.

Effective Date

Section 3 of Ch. 273, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

44-220. Levying of tax—special library fund—payments upon order or warrant. The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax not to exceed 3 mills on the dollar upon all property in such county, which may be levied by the governing body of such county, and not to exceed 4½ mills on the dollar upon all property in such city or town, which may be levied by the governing body of such city or town, in the amount necessary to maintain adequate public library service. The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967.

Allocation of Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

44-221. Board of trustees — appointment — composition of board — tenure. Upon the establishment of a public library under the provisions

of this act, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library. The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall hold their office for five years from the date of appointment, and until their successors are appointed. Initially appointments shall be made for one, two, three, four and five year terms. Annually thereafter, there shall be appointed before the first day of July of each year in the same manner as the original appointments for a five year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession. Following such appointments in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for one year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967.

44-222. Board of trustees—powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library, not inconsistent with law.

(2) Establish and locate a central public library and may establish branches thereof at such places as are deemed necessary.

(3) Have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library and other libraries to give and receive library service, through the boards of such regions, counties and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.

(4) Have the power to acquire by purchase, devise, lease or otherwise, and to own and hold real and personal property, in the name of the city or county or both as the case may be, for the use and purposes of the library, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the library, and to insure the real and personal property of the library.

(5) Pay necessary expenses of members of the library staff when on business of the library.

(6) Prepare an annual budget indicating what support and maintenance of the public library will be required from public funds for submission

to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) Make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana State Library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) Have the power to accept gifts, grants and donations from whatever source and to expend the same for the specific purpose of the gift, grant, or donation. These gifts, grants and donations shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) Exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: En. Sec. 5, Ch. 260, L. 1967.

Allocation of Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

44-223. Board of trustees—chief librarian—personnel—compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967.

44-224. Free use of library—exclusions—extending privileges. Every library established under the provisions of this act shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967.

44-225. Providing library services—co-operation and merging of boards, institutions and agencies. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to co-operate, merge or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967.

44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes. After the establishment of a county free library as provided in this act, the governing body of any city or town which has an existing tax-supported public library may notify the board of county commissioners that such city or town does not desire to be a part of the county library system. Such notification shall exempt the property in such city or town from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967.

44-227. "City" defined. Wherever the word "city" is used in this act it means city or town.

History: En. Sec. 11, Ch. 260, L. 1967.

44-228. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967.

CHAPTER 3—CITY FREE PUBLIC LIBRARIES

(Repealed—Section 12, Chapter 260, Laws of 1967)

44-301 to 44-303. (5049 to 5051) Repealed.

Repeal

These sections (Sec. 1, p. 110, L. 1883; Secs. 5039 to 5041, Pol. C. 1895; Sec. 1, p. 229, L. 1897; Sec. 1, Ch. 32, L. 1931; Sec. 1, Ch. 61, L. 1947), relating to the establishment of free public libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

CHAPTER 4—STATE LAW LIBRARY

Section 44-403. Powers and duties of board.
44-404. Librarian—term of office.
44-410. Accounts—approval.
44-411. Index to session laws.

44-403. Powers and duties of board. The powers and duties of said board are as follows:

(1) to (5). * * * [Same as parent volume.]

(6) To report as provided in section 2 [82-4002] of this act.

(7). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, biennially, a statement of all important transactions of the board, and of the operations of the library, with suggestions and recommendations as to what the board deems necessary for the increased utility and efficiency of the library" in subdivision (6).

44-404. Librarian—term of office. The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees.

History: En. Sec. 4, Ch. 153, L. 1949; amd. Sec. 21, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second sentence reading, "The librarian must execute an official bond, in the sum of one thousand dollars ($1,000.00), to be approved by the chief justice, and deposited with the secretary of state."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

44-407. Repealed.

Repeal

This section (Sec. 7, Ch. 153, L. 1949), relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.

History: En. Sec. 10, Ch. 153, L. 1949; amd. Sec. 13, Ch. 97, L. 1961; amd. Sec. 85, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

44-411. Index to session laws. It shall be the duty of the legislative services division of the legislative council to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislative assembly of Montana. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indexes, the index of each succeeding volume of the session laws shall conform, as near as practicable, with those of the volumes preceding it. There shall also be prepared for each volume of such laws an additional index, showing what sections of the several codes of this state, and what session laws have been amended, repealed, altered, or changed by any laws published in that volume, which shall be known and designated as the "code index."

History: En. Sec. 11, Ch. 153, L. 1949; amd. Sec. 1, Ch. 128, L. 1973.

Amendments

The 1973 amendment substituted "legislative services division of the legislative council" for "state law librarian" in the first sentence; deleted "prepared by said librarian" from the end of the second sentence; deleted the clause following "code index," at the end of the section; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 128, Laws 1973 read "Section 44-412, R. C. M. 1947, is repealed."

44-412. Repealed.

Repeal

Section 44-412 (Sec. 12, Ch. 153, L. 1949; Sec. 86, Ch. 147, L. 1963), relating to stenographic assistance to prepare the index to the session laws, was repealed by Sec. 2, Ch. 128, Laws 1973. For new law, see sec. 44-411.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

Section 44-516. Historical society continued and perpetuated—purposes.
44-517. Definition of terms.
44-518. Library and museum independent of other state institutions.
44-519. Board of trustees—appointment and terms of members.
44-520. Qualifications of trustees.
44-521. Executive committee of trustees.
44-522. Reimbursement of trustees.
44-523. Powers and duties of trustees.
44-524. Director's responsibility—assistants and employees.
44-525. Official seal of society.
44-526. Furnishings and fittings in veterans' and pioneers' building.
44-527. Fund raising drives—revenues and receipts.
44-528. Fine arts' commission abolished.
44-529. Admission fees for antique automobile collection—disposition of proceeds.

44-501 to 44-515. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 134, L. 1949; Secs. 14, 19, Ch. 97, L. 1961), relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963. Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled "an act to incorporate the historical society of Montana," approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled "an act concerning the historical society for the state of Montana and making an appropriation therefor," and by "an act to perpetuate the historical society of the state of Montana," approved March 1, 1949, is hereby continued and perpetuated as the "Montana Historical Society" and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

Cross-References

Society transferred to department of education, sec. 82A-503.

44-517. Definition of terms. As used in this act, (1) "Society" means the Montana historical society and includes

(a) The historical and miscellaneous libraries and their contents;

(b) Any museums and art galleries, and their contents, acquired by the trustees:

(c) Any historical places, sites or monuments acquired or developed by the society;

(d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and

(e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) "Trustees" means the board of trustees of the Montana historical society.

(3) "Committee" means the executive committee of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963.

44-518. Library and museum independent of other state institutions. Any historical library or museum administered by the society in accordance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963.

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

Cross-References

Appointment and terms of members of board after reorganization, sec. 82A-507 (2).

Removal of Director of State Historical Society

Under this section and sections 44-523 and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-520. Qualifications of trustees. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

History: En. Sec. 5, Ch. 47, L. 1963.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee

such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Reimbursement of trustees. The trustees shall serve without compensation, but may be reimbursed for mileage.

History: En. Sec. 7, Ch. 47, L. 1963.

Cross-References

Compensation and reimbursement of trustees, secs. 82A-110(5), 82A-507(2).

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of

Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

History: En. Sec. 8, Ch. 47, L. 1963.

Cross-References

Board to act in advisory capacity, sec. 82A-507(3).

Director's position and functions continued, sec. 82A-504.

Trustees' functions transferred to director, sec. 82A-505.

Removal of Director of State Historical Society

Under this section and sections 44-519 and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

References

State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony

with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963.

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read "Sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

44-529. Admission fees for antique automobile collection—disposition of proceeds. An admission fee shall be set by the board of trustees of the Montana historical society and paid by patrons of the antique Ford automobile collection. Admission fee proceeds up to the amount of twelve thousand five hundred dollars ($12,500) per fiscal year shall be deposited in the general fund. Proceeds over such amount each fiscal year shall be deposited in the Montana historical society account in the earmarked revenue fund.

History: En. Sec. 2, Ch. 324, L. 1967.

Title of Act

An act to appropriate money from the general fund to the Montana historical society to lease, operate and maintain a building to house the antique Ford automobile collection for the biennium ending June 30, 1969.

Appropriation

Section 1 of Chapter 324, Laws 1967, appropriated funds for housing the antique automobile collection during the biennium ending June 30, 1969.

CHAPTER 6—INTERSTATE LIBRARY COMPACT

Section 44-601. Text of library compact.
44-602. Executive officer of state library commission as administrator.

44-601. Text of library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the state's party to this compact to co-operate and share their responsibilities; to authorize co-operation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a co-operative basis; and to authorize co-operation and sharing among localities, states and others in providing joint or co-operative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or co-operative furnishing of library services.

Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in co-operation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may co-operate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or co-operative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use therof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Co-operation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or co-operative library pro-

grams, render joint or co-operative library services, and enter into and perform arrangements for the co-operative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a co-operative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(a) In order to provide for any joint or co-operative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an

agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967.

Title of Act

An act approving and enacting into law the Interstate Library Compact and designating the executive officer of the state library commission as compact administrator for said compact.

44-602. Executive officer of state library commission as administrator. The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967.

TITLE 45—LIENS

Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
4. Loggers' liens, 45-401.
5. Mechanics' liens, 45-501 to 45-502.1, 45-513 to 45-515.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-801, 45-802, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003, 45-1004.1 to 45-1004.3.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.
15. Federal tax lien, 45-1501 to 45-1507.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) Certain contracts void. Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code: One who holds

property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 2—PRIORITY OF LIENS

45-203. (8237) **Order of resort to different funds.**

Settlement of Personal Injury Claim

Where injured party received payment in settlement of his personal injury claim in the form of three different drafts, the settlement was nevertheless one fund against which hospital lien could be asserted according to its priority rather than three different funds to which marshaling principles would be applied in discharging attorney's lien, even though one of the drafts was in the amount of the hospital bill and included the hospital as payee. Sisters of Charity of Providence of Montana v. Nichols, 157 M 106, 483 P 2d 279.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.
45-308. When restoration extinguishes lien.

45-301. (8238) **Right to redeem.** Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) **When restoration extinguishes lien.** Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 4—LOGGERS' LIENS

Section 45-401. Who entitled to lien.

45-401. Who entitled to lien. Every person, general partnership, limited partnership, corporation or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor, or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

History: En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1967. Cal. Civ. C. Sec. 3065.

Amendments

The 1967 amendment inserted "general partnership, limited partnership, corporation or association" after "Every person" at the beginning of the section.

Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chapter and was not entitled to a lien thereunder. Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc., 143 M 87, 387 P 2d 712.

CHAPTER 5—MECHANICS' LIENS

Section 45-501. Who entitled to lien.
45-502. How lien perfected.
45-502.1. Notice of completion.
45-513. Substitution of bond allowed—filing—amount—condition.
45-514. Lien discharged upon filing of bond.
45-515. Action upon bond—period of limitation same.

45-501. (8339) Who entitled to lien. Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person, performing any work and labor upon, or furnishing any material, machinery, or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or waterworks or plant, or any improvements, upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done or material is furnished.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1925; amd. Sec. 1, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1183.

Compiler's Note

The decision in Caird Engineering Works v. Seven-up Gold Mining Co., Inc., 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Amendments

The 1971 amendment inserted a comma after "machinery" the first place that word appears.

Abandoned Improvements — Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as agreed, contractor was allowed foreclosure of lien even though he was unable to complete the work. Gramm v. Insurance Unlimited, 141 M 456, 378 P 2d 662.

Claim Arising upon Contract

A mechanic's lien under this section and sections 45-502 to 45-512 is not a claim arising upon a contract under section 91-2704 and the lien is not lost because creditor's claim is not filed. Hammer v. Chapin, 256 F Supp 818, 820.

Materialmen

There could be no valid materialman's lien against owner where general contractor, subcontractor and materialman told owner that he was not dealing with materialman and that materialman was wholesaler and dealt only with contractors. Glacier State Electric Supply Co. v. Hoyt, 152 M 415, 451 P 2d 90.

Property Covered by Lien

Where defendant owned seven unpatented mining claims and leased such claims under agreement requiring lessee to do shaft and engineering work, and such work was subsequently done by plaintiff with knowledge of lessor, mechanic's lien held by plaintiff attached to all mining claims held by defendant, notwithstanding that plaintiff performed work on only one such claim in group of seven claims. Fausett v. Blanchard, 154 M 301, 463 P 2d 319.

References

Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353 (concurring opinion).

45-502. (8340) **How lien perfected.** (1) Every person wishing to avail himself of the benefits of this chapter must file with the county clerk of the county in which the property or premises mentioned in the preceding section is situated, and within ninety days after the material or machinery aforesaid has been furnished, or the work or labor performed, a just and true account of the amount due him, after allowing all credits, and containing a correct description of the property to be charged with such lien, verified by affidavit, but any error or mistake in the account or description does not affect the validity of the lien, if the property can be identified by the description; which paper containing the account, description, and affidavit is deemed the lien, and when there is an open account between the parties for labor, material, or machinery, such lien may be filed within ninety days after the date of the last item in such account, and include all items and charges contained therein, for material or machinery furnished for, or work performed on, the property on which the lien is claimed.

(2) The time within which to perfect the lien by filing of the notice of lien is shortened if the provisions of section 3 [45-502.1] of this act are complied with and a notice of completion is timely filed, in which event such notice of lien must be filed within sixty (60) days immediately following the first publication of the notice of completion.

(3) The following acts of events constitute "completion of any work or improvement" for the purpose of filing a notice of completion:

(a) The written acceptance by the owner, his agent or his representative of the building, improvement or structure. The filing of a

notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) The cessation from labor for thirty (30) days upon any building, improvement or structure, or the alteration, addition to or repair thereof.

History: Ap. p. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; en. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R. C. M. 1921; amd. Sec. 2, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1187.

Compiler's Note

The decision in Caird Engineering Works v. Seven-up Gold Mining Co., Inc., 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Amendments

The 1971 amendment designated the former section as subsection (1); and added subsections (2) and (3).

Effect of Failure to File Lien within Ninety Days after Material Is Furnished —Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353.

Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly $4000 but no proof that he had done so with intent to defraud, he did not lose his right to a mechanic's lien but the trial court should require an accounting. Hammond v. Knievel, 141 M 433, 378 P 2d 388.

Last Item in Open Account

Entries made in open account crediting owner for materials returned did not operate to keep ninety-day period allowed under this section for filing mechanic's lien from lapsing, since entry of credit for payment or for goods returned does not fall within ambit of "last item in such account"; legislature by that language meant last item furnished, not last entry in open account. American Homes, Inc. v. Broadmoor Corp., 153 M 184, 455 P 2d 334.

Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. Hammond v. Knievel, 141 M 433, 378 P 2d 388.

45-502.1. Notice of completion. (1) The owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county recorder of the county where the property is situated and the notice shall set forth:

(a) The date when the work or improvement was completed, or the date on which cessation from labor occurred first and the period of its duration.

(b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.

(c) A description of the property sufficient for identification.

(d) The name of the contractor, if any.

(3) The notice shall be verified by the owner or his agent.

(4) A copy of the notice of completion shall be published once each week for three successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

History: En. Sec. 3, Ch. 408, L. 1971.

Title of Act

An act to shorten the period for filing mechanics' liens by providing for filing of a notice of completion and amending sections 45-501 and 45-502, R. C. M., 1947.

45-504. (8342) **What property affected.**

Compiler's Note

The decision in Caird Engineering Works v. Seven-up Gold Mining Co., Inc., 111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Mining Claims

Limit of one acre to mechanic's lien, as set forth in this section, does not apply to mining claim. Fausett v. Blanchard, 154 M 301, 463 P 2d 319.

45-505. (8343) **Leasehold interest—how affected.**

Compiler's Note

The decision in Caird Engineering Works v. Seven-up Gold Mining Co., Inc., 111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-506. (8344) **Priority of lien over mortgage or other liens.**

Lien Preferred to Subsequent Mortgage

A mechanic's lien for performed work and furnished material for building, erected on land of decedent prior to his death, which was perfected August 23, 1963 after decedent's death, had priority over a mortgage executed by the successor to the estate of the deceased on January 21, 1965 to the small business administration, an agency of the United States, which failed to protect itself by withholding a sufficient amount of the loan proceeds to retire the lien. Hammer v. Chapin, 256 F Supp 818, 820.

45-513. Substitution of bond allowed — filing — amount — condition. Whenever a mechanics' lien has been filed upon real property or any improvements thereon, as enumerated in section 45-501, R. C. M. 1947, the owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated, or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated. Such bond shall be in an amount one and one-half (1½) times the amount of the said lien, and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed. The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorney fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

History: En. Sec. 1, Ch. 338, L. 1971.

Title of Act

An act providing that the owner of real property against which a mechanics' lien has been filed may substitute a bond for the security of the lien and that said real property shall then be released from the

effect of such lien, together with any improvements thereon, and providing, in such instance, that the lien claimant shall have an action upon the bond rather than an action to foreclose a lien, and providing that the statute of limitations for foreclosure of a mechanics' lien shall apply to an action upon such bond.

45-514. Lien discharged upon filing of bond. Upon the filing of a bond as provided in section 1 [45-513] of this act, the lien against the said real property shall forthwith be discharged and released in full and the said bond shall be substituted for such lien.

History: En. Sec. 2, Ch. 338, L. 1971.

45-515. Action upon bond—period of limitation same. When a bond is filed as provided in section 1 [45-513] of this act, the person filing such lien may bring an action upon the said bond. Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

History: En. Sec. 3, Ch. 338, L. 1971.

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE

Section 45-704. Acknowledgment of satisfaction of lien.
45-707. Satisfaction of lien.

45-704. (8362) **Acknowledgment of satisfaction of lien.** Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) **Satisfaction of lien.** Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on

the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

Section 45-801. Liens of threshermen, swathers and owners of combine harvester and thresher upon grain or crops.
45-802. Claim of lien, when, where and how filed, service of notice.
45-809. Acknowledgment of satisfaction of lien—penalty.

45-801. (8366) Liens of threshermen, swathers and owners of combine harvester and thresher upon grain or crops. All threshermen or swathers owning or operating threshing or swathing machines, and all owners of combine harvesters and threshers, shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher, for and on account of the services rendered and the labor performed by them on said grain and crops, and which lien may be claimed by the owner of said grain for the reasonable value of such services, if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested or combined; and, provided, notices are given and lien is filed within the time provided by this act.

If the prevailing price for threshing, harvesting or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of chapter 201, Title 93.

History: En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; amd. Sec. 1, Ch. 308, L. 1973.

Amendments

The 1973 amendment inserted the references to swathing and swathers in the first sentence of the first paragraph; deleted from the first paragraph provisions limiting the lien to 7¢ per bushel for threshing most grains and to $1.50 per acre for combining most grains; added the second paragraph; and made minor changes in style.

45-802. (8367) Claim of lien, when, where and how filed, service of notice. Every person intending to avail himself of the benefits of this act must file with the county clerk of the county in which said grain or other crops were grown, within ten days after the last service was rendered or labor performed in the threshing of said grain or other crops, or the cutting and harvesting and threshing by said combined harvester and thresher, a notice that within twenty days a lien, as specified in section 45-801, will be claimed, and within twenty days thereafter shall file with the county clerk and recorder of the county in which said grain or other crops were grown, a just and true account of the amount due him or them for such services or labor after allowing all

just credits and offsets and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such threshing or cutting and harvesting, the name of the person, firm or corporation for whom such labor and services were performed, and a description of the lands as nearly as possible, upon which said grain or other crops were raised, and a description of the legal subdivision of land upon which said grain is stored, and if said grain is stored in an elevator, the locality of the said elevator, which statements of facts shall be verified by affidavit of the person claiming such lien, or his duly authorized agent or attorney, having knowledge of the facts; but any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised, shall not invalidate such said lien.

If the grain or other crops so threshed, cut, harvested and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, then the threshermen or owner of the combine desiring to claim such lien shall also serve written notices upon the elevatorman or other private purchaser, that he will claim and file a lien upon said grain or other crops for his services or labor performed in threshing, or combining and threshing the same.

History: En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R. C. M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; amd. Sec. 2, Ch. 308, L. 1973.

Amendments

The 1973 amendment substituted "as specified in section 45-801" for "of not to exceed twelve cents per bushel for grain threshed or not to exceed two dollars per acre for grains harvested and threshed with a combined harvester and thresher, except flax, clover seed, alfalfa seed, or other grass seeds, which shall be charged for at the prevailing price for that particular locality in which such grain or seed is threshed or combined" in the first paragraph.

45-809. (8374) **Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) **Acknowledgment of satisfaction of lien—penalty.** Whenever the indebtedness which is a lien upon any of such crops is paid

and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. **Manner of enforcing liens—duty of county clerks.**
45-1004.1. How lien perfected.
45-1004.2. Date lien arises—preference over other liens—parity of liens.
45-1004.3. Priority of lien over mortgage or other liens.

45-1003. (8377) **Manner of enforcing liens—duty of county clerks.** The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973.

Amendments

The 1963 amendment inserted "arise, be perfected, have the same priority and" before "be enforced" near the beginning of the section; and, at the end of the section, added "with the following exceptions: (1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated. (2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract."

The 1973 amendment deleted all the language inserted or added by the 1963 amendment and restored the section as found in the parent volume.

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004. Repealed.

Repeal

Section 45-1004 (Sec. 4, Ch. 143, L. 1957), relating to the perfection of oil and gas well and pipeline liens, was repealed by Sec. 2, Ch. 193, Laws 1963. For present law, see sec. 45-1004.1.

45-1004.1. How lien perfected. Every person, corporation or copartnership claiming a lien under this chapter shall file with the county clerk of the county in which such land, leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and

his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under section 45-1002, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under contract as aforementioned.

History: En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973.

Title of Act

An act amending section 45-1003, R. C. M. 1947, relating to liens for labor and material furnished for use of oil or gas wells or pipelines by deleting any reference to perfecting, priority, and method of filing such liens; providing how such liens are perfected; providing for the date such liens shall arise; providing for the preference of such lien over certain other liens; providing that all liens affixed by virtue of chapter 10 of Title 45, R. C. M. 1947, upon the same property shall be of equal standing; and providing for the priority of such lien over mortgage or other liens.

45-1004.2. Date lien arises—preference over other liens—parity of liens. The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 45-1004.1, such lien shall be preferred to all other titles, charges, liens or encumbrances which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises. All liens affixed by virtue of this chapter upon the same property shall be of equal standing.

History: En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973.

45-1004.3. Priority of lien over mortgage or other liens. The lien herein provided for shall have no priority over other liens, encumbrances or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973.

45-1005, 45-1006. Repealed.

Repeal

Sections 45-1005, 45-1006 (Secs. 5 and 6, Ch. 143, L. 1957), relating to the priority of oil and gas well and pipeline liens, were repealed by Sec. 2, Ch. 193, Laws 1963. For present law, see secs. 45-1004.2 and 45-1004.3.

CHAPTER 11—MISCELLANEOUS LIENS

Section 45-1106. Agisters' liens and liens for service—priority.
45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal

This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) **Agisters' liens and liens for service—priority.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887: amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted "perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

Other Recorded Liens

The term "other recorded liens" includes conditional sales contracts. **Williamson v.** Skerritt, 141 M 422, 378 P 2d 215.

45-1107. (8384) **Secured party may take possession of property.** Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

Amendment

The 1963 amendment substituted "secured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

CHAPTER 12—LIENS OF PHYSICIANS, NURSES AND HOSPITALS IN PERSONAL INJURY CLAIMS

45-1203. (8395.3) **Same—when filed with clerk of court.**

Notice to Attorneys of Record

Attorneys of record in a personal injury action are chargeable as agents for their clients with notice and knowledge imparted to their client by filing of notice of a hospital lien in the action. Sisters of Charity of Providence of Montana v. Nichols, 157 M 106, 483 P 2d 279.

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) **Repealed.**

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

CHAPTER 15—FEDERAL TAX LIEN

Section 45-1501. Federal tax lien—place of filing.
45-1502. Execution of notices and certificates.
45-1503. Duties of filing officer.
45-1504. Fees.
45-1505. Uniformity of interpretation.
45-1506. Short title.
45-1507. Tax liens and notices filed before effective date of this act.

45-1501. Federal tax lien—place of filing. (a) Notices of liens upon real property for taxes payable to the United States, and certificates

and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967.

NOTE.—The following states have enacted the Uniform Federal Tax Lien Registration Act: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming.

Title of Act

An act to revise the Uniform Federal Tax Lien Registration Act, authorizing the filing of notices of liens for taxes payable to the United States of America and of certificates discharging such liens, and to make uniform the law with reference thereto; repealing sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906, 84-3907, R. C. M. 1947.

45-1502. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967.

45-1503. Duties of filing officer. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the filing officer, and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 87A-9-403, Revised Codes of Montana 1947, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in section 1 [45-1501] of this act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 1 [45-1501], he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is two dollars ($2). Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar ($1) per page.

History: En. Sec. 3, Ch. 228, L. 1967.

45-1504. Fees. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) for a tax lien on real estate, two dollars ($2).

(2) for a tax lien on tangible and intangible personal property, two dollars ($2).

(3) for a certificate of discharge or subordination, one dollar ($1).

(4) for all other notices, including a certificate of release or nonattachment, two dollars ($2). The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967.

45-1505. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967.

45-1506. Short title. This act may be cited as the Revised Uniform Federal Tax Lien Registration Act.

History: En. Sec. 6, Ch. 228, L. 1967.

45-1507. Tax liens and notices filed before effective date of this act. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967," containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967.

Separability Clause

Section 7 of Ch. 228, Laws 1967 read "Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of the act are severable."

Repealing Clause

Section 8 of Ch. 228, Laws 1967 read "Repeal of prior acts. Sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906 and 84-3907, R. C. M. 1947, and all other acts or parts of acts in conflict herewith are hereby repealed."

TITLE 46—LIVESTOCK

Chapter 1. Livestock industry—regulation by livestock commission, 46-105.
2. Livestock sanitary board and state veterinary surgeon—quarantine—inspection and destruction of diseased stock—licensing dairies, milk plants and slaughterhouses, 46-212, 46-232.
6. Brands—recording—venting—livestock mortgages, 46-609.
7. Inspectors and detectives, 46-704, 46-707.
8. Inspection of livestock before sale or removal from county, 46-801 to 46-804, 46-806, 46-809 to 46-813.
9. Livestock markets—inspection and quarantine—license and bonding, 46-904, 46-911, 46-918.1.
10. Estrays—disposal of, 46-1005, 46-1006.
11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1107.
14. Legal fences—liability of owners for trespassing stock, 46-1411, 46-1413.
19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915.
21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
23. Grass conservation—grazing districts, 46-2305, 46-2306, 46-2322, 46-2331.
25. Artificial insemination of animals and poultry, 46-2505, 46-2515.
27. County livestock protective committees, 46-2706.
28. Cattle protective districts, 46-2801 to 46-2810.
29. Livestock dealers, 46-2901 to 46-2908.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

Section 46-105. Audit of bills—payment of expenses.

46-101. (3253) Livestock commission, etc.

Cross-References

Commission renamed and continued as head of department, sec. 82A-1303.

46-102. (3254) Compensation of members.

Cross-References

Compensation and reimbursement of members, secs. 82A-112(1)(e), 82A-1303 (3).

46-104. (3256) Duties and powers of commission.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-105. (3257) Audit of bills—payment of expenses. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "which shall be paid out of the livestock

commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties entitled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund. which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

46-106. (3258) Repealed.

Repeal

Section 46-106 (Sec. 6, Ch. 51, L. 1917), relating to the annual report of the commission, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTERHOUSES

Section 46-212. Establishment of livestock disease control area—entry into area—compulsory inspection area, when.
46-232. Licensing of milk plants and dairies selling milk or cream for public consumption.
46-247, 46-248. [Transferred from Title 94.]

46-201. (3260) Creation of livestock sanitary board.

Cross-References

Board abolished and functions transferred, sec. 82A-1304.

46-212. Establishment of livestock disease control area—entry into area—compulsory inspection area, when. Upon receipt of a petition signed by not less than seventy-five per cent (75%) of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, and representing not less than fifty per cent (50%) of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries, of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the Montana board of livestock is authorized and empowered to establish such school district as a disease control area and to enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules and regulations promulgated by the Montana department of livestock for the inspection, eradication, treatment, or vaccination of such livestock and to reimburse the owners of livestock slaughtered by order of the Montana department of livestock or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

Provided that in any circumscribed disease control area as established under this act, by the Montana department of livestock, no other livestock of the species designated by the Montana department of livestock to be

inspected, tested, treated, or vaccinated, shall enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the Montana department of livestock or are accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the Montana department of livestock.

Provided further that when seventy-five per cent (75%) or more of the school districts in any county in Montana are established under this act by the Montana department of livestock as disease control areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the Montana department of livestock.

History: En. Sec. 1, Ch. 94, L. 1943; amd. Sec. 1, Ch. 27, L. 1973.

Amendments

The 1973 amendment substituted "school district, as determined from the permanent records of the board of county commissioners describing school district boundaries" in the first paragraph for "township, as determined by government survey"; substituted "school district" for "township" elsewhere throughout the section; and substituted "board of livestock" or "department of livestock" for "livestock sanitary board" throughout the section.

46-232. (3282) **Licensing of milk plants and dairies selling milk or cream for public consumption.** It is unlawful for the following businesses to operate in the state of Montana without first obtaining a license from the department of livestock, animal health division:

1. A dairy selling milk or cream for public consumption in the form in which it is originally produced.

2. Condensed, evaporated or powdered milk plant.

3. Fluid milk plant. A milk plant is defined as a place where milk or cream is purchased or collected and prepared for distribution to the consumer in liquid form but is not produced at such place.

A license expires on the last day of December of the year issued. The department of livestock, animal health division, may, following the procedures outlined in the Montana Administrative Procedure Act [82-4201 to 82-4225] deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules and regulations of the department of livestock, animal health division, or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

The department of livestock is authorized to issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled in accordance with the laws of Montana, or the regulations of the department of livestock, animal health division. It is unlawful for a dairy, while restrained, to sell or give away for public consumption any milk or cream produced or handled by the dairy and it is unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

The following license fees are charged for licenses issued under this section:

Condensed, evaporated or powdered milk factory, fifty dollars ($50).

Fluid milk plant, fifty dollars ($50).

Dairy, five dollars ($5).

A person convicted of violating this act is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R. C. M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; amd. Sec. 1, Ch. 382, L. 1973.

Amendments

The 1973 amendment substituted "department of livestock, animal health division" for "livestock sanitary board" throughout the section; deleted "and without having been converted into some manufactured product" from the end of clause 1; inserted "Fluid" before "milk plants" at the beginning of clause 3 and in the schedule of license fees; deleted a reference to the veterinary surgeon from the second sentence of the first paragraph after the numbered clauses; inserted "following the procedures outlined in the Montana Administrative Procedure Act" and "deny, suspend or" in the second sentence of the first paragraph after the numbered clauses; deleted from the second paragraph after the numbered clauses a first sentence exempting from the license requirement dairies that produce only butter or for sale to manufacturing plants but requiring them to comply with laws and regulations; increased the license fees from $5.00 to $50 for condensed, evaporated or powdered milk factories with output of less than 500,000 pounds, from $25 to $50 for such factories with output of more than 500,000 pounds, from $5.00 to $50 for fluid milk plants, from $1.00 to $5.00 for dairies of less than 20 cows, and from $2.50 to $5.00 for dairies of more than 20 cows; and made numerous minor changes in phraseology and style.

46-241. (3291) Repealed.

Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board account, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-242. (3292) Repealed.

Repeal

Section 46-242 (Sec. 33, Ch. 262, L. 1921), relating to the annual report of the state veterinary surgeon, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

46-247, 46-248. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-35-172 and 94-35-173. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
46-247	94-35-172
46-248	94-35-173

CHAPTER 3—TUBERCULIN REGULATION, SALE AND DISTRIBUTION

46-301. (3296) Tuberculin—permission for sale or distribution of.

Cross-References

Sanitary board abolished and functions transferred, sec. 82A-1304.

CHAPTER 4—MONTANA MEAT INSPECTION LAW

46-403. (3298.3) Employment of experts authorized.

Cross-References

Sanitary board abolished and functions transferred, sec. 82A-1304.

CHAPTER 6—BRANDS—RECORDING—VENTING—LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-606. (3304) Right of owner of recorded brand.

Ownership of Cattle

Although under this section and section 67-308, prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under section 93-301-11. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, overcame the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 491.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for the recording of each new mark or brand, or for recording each mark or brand transfer or for re-recording of each mark and brand the sum of ten dollars ($10), and for a certified copy of any such record and each duplicate certificate one dollar ($1), and all fees so collected shall be paid into the earmarked revenue fund for the use of the livestock commission; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969.

Amendments

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1969 amendment substituted "for the recording of *** sum of ten dollars ($10)" for "for recording each mark or brand the sum of eight dollars ($8.00), and for re-recording each mark or brand the sum of four dollars ($4.00)."

CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-704. Compensation.
46-707. Compensation for animals killed.

46-702. (3310) Repealed.

Repeal

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock inspectors and detectives, was repealed by Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the commission, and must

be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "commission" for "board" in two places.

46-706. (3314) **Brands fraudulently changed.**

Immunity from Liability

Employees of the state livestock commission who, with probable cause, seized and killed animals to establish whether brand had been altered or defaced are not liable for wrongful conversion. Johnson v. Furgeson, 158 M 170, 489 P 2d 1032.

46-707. (3315) **Compensation for animals killed.** The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission moneys in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" in the second sentence for "livestock commission fund."

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE SALE OR REMOVAL FROM COUNTY

Section 46-801. Inspection of livestock before change of ownership or removal from county—transportation permits.
46-802. Duties of state stock inspectors and deputy stock inspectors—Montana livestock commission authorized to make rules and regulations.
46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.
46-804. Fees for inspection and livestock transportation permits.
46-806. Penalties for violations of act.
46-809. Order requiring sheep removal permits—petition by sheep raisers.
46-810. Permit required for removal of sheep after order—violation as misdemeanor.
46-811. Form and issuance of permits—fee.
46-812. Publication of notice of sheep removal permit order.
46-813. Removal of permit requirement.

46-801. Inspection of livestock before change of ownership or removal from county—transportation permits. (1) Except as in this act otherwise provided, it shall be unlawful to remove or cause to be removed from any county in this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, by means of any railroad car, motor vehicle, trailer, horse-drawn vehicle, boat or in any manner whatsoever, or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless such

animal shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate of such inspection shall have been issued in connection with and for the purpose of such transportation or removal or of such change of ownership as in this act provided. Such inspection must be made in daylight provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five (5) or less such animals.

(2) and (3). * * * [Same as parent volume.]

(4) The person in charge of any such cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly being removed from any county in this state, where inspection thereof is required by this act, or where change of ownership has occurred as in this act defined, or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the same to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of either of them and the provisions of section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) In case of saddle, work or show horse or horses being transported from county to county within the state by the owner thereof for his personal use or business and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to purpose and extent of transportation by the inspector issuing same in order to serve as a travel permit within the state for a period not to exceed one year for the horse or horses described thereon. Such permit becomes void upon any transfer of ownership or if such horse or horses are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of saddle, work or show horse or horses may apply for a permanent transportation permit valid for both interstate and intrastate transportation of such horse or horses and until there is a change of ownership. To obtain such permit or permits such horses must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner thereof must present positive proof of ownership to a state stock inspector. A written application, on forms to be provided by the department of livestock, must be completed by the owner and presented to a state stock inspector together with a five dollar ($5) permit fee for each horse. The application shall contain a thorough physical description of such horse or horses showing also all brands and tattoos carried by such horse or horses.

Upon approval of such application by a state stock inspector, a permanent transportation permit shall be issued by the department of livestock of the state of Montana to the owner for each horse and such permit shall be valid for the life of the horse unless there is a change

of ownership in which event the permit shall automatically become void. The permit so issued must accompany the horse for which it was issued at all times while such horse is in transit. Such permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid in the state of Montana permanent transportation permits validly issued in other jurisdictions to the owner of saddle, work or show horses subsequently entering the state of Montana, provided that such permit shall be deemed automatically void upon a change of ownership.

(c) In case of registered purebred cattle being transported from county to county within the state by the owner thereof for show purposes and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to purpose and extent of transportation by the inspector issuing same in order to serve as a travel permit within the state for a period not to exceed one year for the cattle described thereon. Such permit becomes void upon any transfer of ownership or if such cattle are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(6) The provisions of subsection (1) shall not apply,

(a) to (g). * * * [Same as parent volume.]

(7) Except as provided for in subsections 5 (b), 6 (a) and 6 (b) of this section, nothing contained in this chapter shall authorize or permit any person to remove or cause to be removed any animal or animals from any county in this state to a location outside of the state of Montana on the hoof, or by any means or manner whatsoever, unless such animal or animals shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate for such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided.

(8) It shall be the duty and responsibility of any person in possession of livestock to secure such inspection of livestock as provided in this chapter before any livestock shall leave the state of Montana.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971; amd. Sec. 1, Ch. 247, L. 1973.

Amendments

The 1969 amendment added subsections (7) and (8).

The 1971 amendment inserted "or to transfer ownership by sale or otherwise to a feeder purchaser" in subsection (1); inserted "or where change of ownership to a feeder purchaser has occurred as in this act defined" and "or sold to a feeder purchaser" in subsection (4); and added a subsection (9) defining "feedlot" and "feeder purchaser."

The 1973 amendment deleted "to a feeder purchaser" after "sale or otherwise" in subsection (1); inserted "or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions" in subsection (1); inserted "or of such change of ownership" near the end of the first sentence in subsection (1); inserted the proviso at the end of subsection (1); deleted "to a feeder purchaser" following "where change of ownership" in subsection (4); inserted the preliminary clause at the beginning of subsection (5); divided the language formerly in subsection (5) into subdivisions (5)(a) and

(5)(c); inserted subdivision (b) of subsection (5); inserted the reference to subdivision (5)(b) at the beginning of subsection (7); deleted the subsection (9) added by the 1971 amendment and made minor changes in style and phraseology.

46-802. Duties of state stock inspectors and deputy stock inspectors —Montana livestock commission authorized to make rules and regulations. It shall be the duty of state stock inspectors and deputy state stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for sale, removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal as specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form of certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the Montana livestock commission where a livestock inspector is available for inspection, in an adjoining county, shall issue to such person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign such permit certifying the brands, description and destination of such animals. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commission may from time to time require. Any such permit so issued

shall be good for shipment within thirty-six (36) hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permittee from performance. One copy of such permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the animal or animals are delivered.

The Montana livestock commission is hereby authorized to make such rules and regulations as shall be deemed necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 274, L. 1973.

Amendments

The 1969 amendment inserted "duly approved * * * available for inspection" after "shipping point" in the third paragraph and added the last paragraph.

The 1971 amendment inserted "sale to a feeder purchaser" in the first paragraph; and inserted "and the purchaser or transferee, if applicable" in the second sentence of the second paragraph.

The 1973 amendment deleted "to a feeder purchaser" following "animals intended for sale" in the first paragraph.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, or upon a change of ownership, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of sale, shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same

manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History: En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971; amd. Sec. 3, Ch. 247, L. 1973.

Amendments

The 1963 amendment substituted "agency fund" for "stock estray fund" in the last sentence of the second paragraph; and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

The 1971 amendment inserted "or upon a change of ownership, to a feeder purchaser" in the first paragraph; and inserted "sale" before "shipment or destination" in the first paragraph.

The 1973 amendment deleted "to a feeder purchaser" following "a change of ownership" in the first paragraph.

Liability of Inspectors

Employees of the state livestock commission who, with probable cause, seized and killed animals to establish whether brand had been altered or defaced, were simply following their duty under this section and cannot be sued for wrongful conversion. Johnson v. Furgeson, 158 M 170, 489 P 2d 1032.

46-804. Fees for inspection and livestock transportation permits. (a) For the service of inspection herein provided for before removal from county, or before change of ownership, the inspector making such inspections shall receive twenty-five cents (25c) per head for twelve (12) head or less, or three dollars ($3.00) for from twelve (12) head to twenty (20) head and shall receive twenty cents (20c) per head for each animal over twenty (20) head; for the issuance of a market consignment permit or transportation permit (other than a permanent permit) herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25c) for each permit issued for twelve (12) head or less; fifty cents (50c) for each permit for twelve (12) to thirty (30) head and one dollar ($1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit herein provided, the state stock inspector taking the application for permit shall receive five dollars ($5) per head for each permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the

person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971; amd. Sec. 4, Ch. 247, L. 1973.

Amendments

The 1963 amendment, in subds. (a), (b) and (c), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1971 amendment inserted "or before change of ownership to a feeder purchaser" near the beginning of subdivision (a).

The 1973 amendment deleted "to a feeder purchaser" following "change of ownership" near the beginning of subsection (a); reduced the maximum number inspected for a $3.00 fee from thirty to twenty head; increased the fee from ten cents to twenty cents per head for each animal over twenty head; inserted the parenthetical "(other than a permanent permit)"; and inserted the third sentence in subsection (a).

46-806. Penalties for violations of act. (a) to (e). * * * [Same as parent volume.]

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the livestock commission, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (f), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-809. Order requiring sheep removal permits—petition by sheep raisers. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

History: En. Sec. 1, Ch. 135, L. 1963.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to require a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963.

46-811. Form and issuance of permits—fee. Before making any order under this act, the livestock commission must provide for the form of the permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

History: En. Sec. 3, Ch. 135, L. 1963.

46-812. Publication of notice of sheep removal permit order. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963.

46-813. Removal of permit requirement. Upon receipt of a petition signed in the same manner as that specified in section 1 [46-809] of this act, requesting the removal of the permit requirement, the livestock commission shall, at its next meeting, make an order removing the permit requirement.

History: En. Sec. 5, Ch. 135, L. 1963.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

Section 46-904. State treasurer to hold proceeds of sales of stray stock.
46-911. License fee.
46-918.1. Operator of market to issue a receipt for livestock consigned.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 778.

46-902. (3329) Inspection of public markets.

Cross-References

Commission renamed and continued in department of livestock, sec. 82A-1303.

46-904. (3331) State treasurer to hold proceeds of sales of stray stock.

When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state livestock commission, the state treasurer shall be required to hold such money in the agency fund and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921; amd. Sec. 106, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked revenue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

46-907. Regulation of livestock markets.

Cross-References

Commission renamed and continued in department of livestock, sec. 82A-1303.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-908. Certificate to operate livestock market required, etc.

Governmental Licensing

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates.

Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market economically. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-911. License fee. Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars ($100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

46-917. Appeal by licensee or applicant for certificate, etc.

Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capriciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-918.1. Operator of market to issue a receipt for livestock consigned. Any person operating a "livestock market" as defined by section 46-906, R. C. M. 1947, which must have a certificate issued by the Montana livestock commission according to section 46-908, R. C. M. 1947, shall issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number and description of livestock he has consigned for sale.

History: En. Sec. 1, Ch. 34, L. 1969.

Title of Act

An act requiring any person who operates a livestock market and obtains a certificate issued by the livestock commission according to section 46-908, R. C. M. 1947, to issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number of livestock he has consigned.

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.
46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.

46-1005. (3337) **"Estray," as herein used, defined.** An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of

marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963.

Amendment

The 1963 amendment extended the section to include sheep and lambs.

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

46-1006. (3338) **Publication of description of estrays sold—disposition of proceeds remaining in state treasury.** A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state livestock commission fund" at the end of the section.

CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION—HIDE DEALERS' LICENSES

Section 46-1107. Hide dealer or buyers license fee—disposition of proceeds.

46-1107. (3350.8) **Hide dealer or buyers license fee—disposition of proceeds.** Every hide dealer or buyer shall pay to the livestock commission a license fee of five dollars ($5.00) for each established place of business at which such hide dealer or buyer purchases or deals in hides, before engaging in, or conducting any business as such in the state of Montana, which license shall continue in force and effect for that calendar year. The moneys collected from such licenses shall be placed in the earmarked revenue fund, livestock commission account. The license must be renewed January 1 of each year commencing January 1, 1961.

History: En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission fund" at the end of the second sentence.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

Section 46-1411. Marking land and mining claims in national forest.
46-1413. Marking—right of action against trespassing stock.

46-1410. (3379) Stock trespassing may be retained.

Personal Injury in Removing Animal

The notice requirements of subsection (2) were irrelevant to an action against the owner of a trespassing mule for personal injuries sustained in attempting to remove the mule. Ekwortzel v. Parker, 156 M 477, 482 P 2d 559.

46-1411. (3380) Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places

46-1413. (3382) Marking—right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

CHAPTER 17—ANIMALS RUNNING AT LARGE

Section 46-1720. [Transferred from Title 94.]

46-1709. (3400.3) Castration of animals running at large, etc.

Notice to Owner

The notice requirements of this section were irrelevant to an action against the owner of a trespassing mule for personal injuries sustained in attempting to remove the mule. Ekwortzel v. Parker, 156 M 477, 482 P 2d 559.

46-1720. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-3522. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-3522.

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS—KILLING DOGS INJURING LIVESTOCK

Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
46-1903. Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.
46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims.

For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "there is hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

46-1903. (3417.2) Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.

(a) and (b). * * * [Same as parent volume.]

(c) The Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 84-5214 and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973.

Amendments

The 1963 amendment in the first sentence of subsection (c) deleted "shall have, and it is hereby invested with control and supervision of the state bounty fund, and it" which followed "Montana livestock commission" and deleted the words "in said fund" which followed the words "moneys that are or may be made available to it"; and in the last sentence of subsection (c) deleted the words "said state bounty fund, or against additional" which followed the words "claims against."

The 1973 amendment deleted "Subject to the constitutional authority of the state board of examiners" at the beginning of subsection (c); deleted "section 9 of article XII of the constitution of Montana and" before the reference to section 84-5214 in the first sentence of subsection (c); and deleted "enacted pursuant to such provision of the constitution" following the same reference to section 84-5214.

Cross-References

Advisory committee abolished, sec. 82A-1305.

Livestock commission renamed and continued in department of livestock, sec. 82A-1303.

46-1904. (3417.3) **Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.** All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "whose salaries may be paid in whole or in part out of the fund herein created" which followed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

46-1909. (3417.8) **Livestock commission to examine claims, etc.**

Cross-References

Livestock commission renamed and continued in department of livestock, sec. 82A-1303.

46-1912. (3417.11) **Use of funds remaining after payment of bounties —sale of furs, skins and specimens—presentation to museums.** If, at the end of any bounty paying season, there shall be a surplus of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of such moneys, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund herein created" and "earmarked revenue fund" for "bounty fund."

46-1914. (3417.13) **Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.** The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half (1½) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the earmarked revenue fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963.

Amendment

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as the 'bounty fund'"; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

46-1915. (3417.14) **Penalty for fraudulent claims.** Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same

to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

Livestock running at large in emergency road construction areas, secs. 32-319 to 32-321.

46-2004. (5178) Service upon secretary of livestock commission.

Cross-References

Livestock commission renamed and continued in department of livestock, sec. 82A-1303.

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding fifteen cents (15¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license

fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified in the first sentence from ten to fifteen cents per head.

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of fifteen cents (15¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least fifty-one per cent (51 %) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of fifteen cents (15¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2305. Secretary—compensation.
46-2306. Compensation of members—auditing and payment of claims.
46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.
46-2331. Fees may be imposed by commission against districts.

46-2302. Definitions.

Nonprofit Corporation

Under subdivision 2 of this section, a grazing district is a nonprofit corporation rather than a subdivision of the state, so its powers are not necessarily limited to those expressly granted. Appeal of Two Crow Ranch, Inc., — M —, 494 P 2d 915.

46-2303. Montana grass conservation commission, etc.

Cross-References

Commission abolished and functions transferred, sec. 82A-1502.

46-2305. Secretary—compensation. The commission shall select and appoint a secretary at a salary in such amount as may be specified by the legislative assembly in the appropriation to the grass conservation commission. If the legislative assembly does not specify the maximum salary of the secretary, it shall be fixed by the commission after approval by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office.

History: En. Sec. 5, Ch. 208, L. 1939; amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953; amd. Sec. 2, Ch. 257, L. 1955; amd. Sec. 1, Ch. 24, L. 1967; amd. Sec. 3, Ch. 237, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 24 and once by Ch. 237. Chapter 24 was approved February 10, 1967, and Ch. 237 was approved March 1, 1967. Since the amendments are irreconcilable, the text of Ch. 237 is used above.

Amendments

Chapter 24, Laws of 1967, increased the maximum salary of the secretary of the grass conservation commission from $500 per month to $10,000 per year.

Chapter 237, Laws of 1967, substituted the latter part of the first sentence, beginning with "in such amount," for a clause fixing the secretary's maximum salary at $500 per month; inserted the second and third sentences; and deleted a final sentence providing for the commission to fix the secretary's salary.

46-2306. Compensation of members—auditing and payment of claims. The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars ($10.00) per diem for each day actually in attendance at such board meetings. The per diem of each member of the board shall be limited to not exceed the

amount of five hundred dollars ($500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the moneys of the Montana grass conservation commission in the earmarked revenue fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 208, L. 1939; amd. Sec. 1, Ch. 61, L. 1945; amd. Sec. 25, Ch. 97, L. 1961; amd. Sec. 155, Ch. 147, L. 1963; amd. Sec. 15, Ch. 93, L. 1969.

Amendments

The 1963 amendment substituted "moneys of the Montana grass conservation commission in the earmarked revenue fund" for "state grass conservation fund" in the second sentence of the second paragraph.

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act" at the end of the second paragraph.

46-2312. Powers of state districts.

Assessments

Grazing district bylaw providing for assessment against members owning or in control of livestock trespassing on district land was valid implementation of power granted to grazing district by subdivision 4 of this section. Appeal of Two Crow Ranch, Inc., — M —, 494 P 2d 915.

46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands. Grazing preferences shall run with and be appurtenant to the dependent commensurate and commensurate property upon which they are based. They shall not be subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the bylaws of a state district. Upon application by a permittee, the state district with the approval of the grass conservation commission may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability, provided that in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto, for five (5) consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. Provided further, that such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, and provided further, that no such transfer will be allowed without the written consent of the owner or owners and any encumbrances of the dependent commen-

surate or commensurate property from which the transfer is to be made and provided further, that such transfer shall not in any case become effective until approved by the grass conservation commission. The provision of the section shall not be construed to apply to trespass violations.

When such application is presented to the board the secretary upon the direction of the board shall give notice thereof, setting forth in general said application and the time and place of hearing thereon as fixed by the board, and a copy of said notice shall be given or mailed to the applicant and shall be published for at least once a week for two successive weeks prior to such meeting in a newspaper published or generally circulated within the district, and said notice shall also be posted for at least two full weeks prior to such meeting in three (3) public places within said district, and the date of hearing must be at least fifteen (15) days from the first publication of said notice, and at such hearing the directors shall fully hear and determine such application and objections thereto if any.

Upon the allowance of a transfer under this section, the property from which the transfer is made shall lose its grazing preference to the extent of the preference transferred.

All expenses involved under the application shall be borne by the applicant.

When the land to which a preference is attached shall change its control or ownership such preference shall change with the land, provided, that the person to which such control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees. If such person fails to secure such nonuse permit or refuses to pay such grazing fees, the preferences may be revoked by the state district. If any person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of such land by registered mail that the preference attached to such land will be revoked unless such owners shall pay the usual grazing fees to the state district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the owner or mortgagor does not pay such fees or secure a nonuse permit.

If any permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a nonuse permit or violates any of the rules and regulations of the state district, the state district may notify such permittee and owner of such land by registered mail that the preference attached to such land will be revoked unless such grazing fees or assessments are paid or such permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of such notice. The state district may revoke such preference if the permittee or owner fails to pay such charges or make such compliance.

When a preference is revoked, it shall be detached from the dependent commensurate or commensurate property to which it was formerly appurtenant. The preference shall immediately shift to the state district. The state district may then allocate it to either dependent

commensurate or commensurate property in the manner provided by its bylaws.

In all cases where notices are given permittees under this act by registered mail and addressed to the post-office address of such permittee as shown by the records of such grazing district such notices shall be deemed received by the permittee when deposited in the United States post office by the district or by the commission.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971.

Amendments

The 1971 amendment deleted "owned or controlled by the permittee" following "transferred to other property" in the third sentence of the first paragraph; and made a minor change in punctuation.

46-2326. Running livestock at large or in herd, etc.

Assessments

In view of section 46-2327, grazing district was not limited to the remedies permitted by this section in case of trespassing livestock, but could provide by its bylaws for assessments against its members controlling trespassing livestock. Appeal of Two Crow Ranch, Inc., — M —, 494 P 2d 915.

46-2327. Remedies are supplemental.

Assessments

This section preserved grazing district's power to provide in its bylaws for assessments against members controlling trespassing livestock, despite the fact that section 46-2326 provides other remedies against trespass. Appeal of Two Crow Ranch, Inc., — M —, 494 P 2d 915.

46-2330. Repealed.

Repeal

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by commission against districts. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission. These fees shall be held in the earmarked revenue fund, to be expended by order and direction of the state grass conservation commission for the administration of the commission. If any state district fails or refuses to pay such fee or fees on or before the first day of October of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971.

Amendments

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

The 1971 amendment deleted from the end of the first sentence "and said state grass conservation commission * * * when so collected"; deleted "When such appropriation by the state of Montana is repaid" from the beginning of the second sentence; substituted "These fees" at the beginning of the second sentence for "the balance of such funds"; deleted "further" before "administration of the commission" in the latter part of the second sentence; deleted "and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided" from the end of the second sentence; and substituted "October" for "May" in the last sentence.

CHAPTER 24—RENDERING OR DISPOSAL PLANTS—LICENSING —REGULATION

46-2402. Power and authority of the livestock sanitary board, etc.

Cross-References

Sanitary board abolished and functions transferred, sec. 82A-1304.

46-2412. Disposal of hides, etc.

Compiler's Notes

Sections 46-1101, 46-1108 to 46-1111, referred to in this section in the parent volume, were repealed by Sec. 7, Ch. 44, Laws 1961.

CHAPTER 25—ARTIFICIAL INSEMINATION OF ANIMALS AND POULTRY

Section 46-2505. Act to be administered by Montana department of livestock.
46-2515. Only certain sires to be used for artificial insemination.

46-2501. Repealed.

Repeal

Section 46-2501 (Sec. 1, Ch. 37, L. 1953), relating to purpose of the artificial insemination law, was repealed by Sec. 3, Ch. 102, Laws 1973.

46-2504. Repealed.

Repeal

Section 46-2504 (Sec. 4, Ch. 37, L. 1953), requiring a license to practice artificial insemination, was repealed by Sec. 3, Ch. 102, Laws 1973.

46-2505. Act to be administered by Montana department of livestock. This act shall be administered by the department of livestock and in addition to any powers now conferred by law the department of livestock shall have the following powers and duties:

(a) To promulgate such reasonable rules, regulations, and orders not contrary to the provisions of this act, when required, as may be necessary for the proper administration of this act, specifically including, but not limited to, rules, regulations, and orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries.

History: En. Sec. 5, Ch. 37, L. 1953; amd. Sec. 2, Ch. 102, L. 1973.

Amendments

The 1973 amendment substituted "department of livestock" for "livestock

sanitary board" in the preliminary clause; deleted former subdivisions (a), (b), (c), and (d); and redesignated former subdivision (e) as (a).

Repealing Clause

Section 3 of Ch. 102, Laws 1973 read "Sections 46-2501, 46-2504, 46-2506, 46-2507, 46-2508, 46-2509, 46-2510, 46-2511, 46-2512, 46-2513, and 46-2514, R. C. M. 1947, are hereby repealed."

46-2506 to 46-2514. Repealed.

Repeal

Sections 46-2506 to 46-2514 (Secs. 6 to 14, Ch. 37, L. 1953), relating to licensing and the practice of artificial insemination, were repealed by Sec. 3, Ch. 102, Laws 1973.

46-2515. Only certain sires to be used for artificial insemination. All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease and all other transmissible, infectious, contagious diseases and all transmissible hereditary malformations and other detrimental or undesirable characteristics. Proof of fitness of such sires shall be provided to the department of livestock by the owner or parties providing such sires for artificial insemination.

Semen imported into the state of Montana from other states, territories and possessions of the United States or from foreign countries shall not be used by any artificial inseminator until proof is made to the satisfaction of the department of livestock that the sire from which such semen was taken was free from the above-mentioned diseases.

History: En. Sec. 15, Ch. 37, L. 1953; amd. Sec. 1, Ch. 102, L. 1973.

Amendments

The 1973 amendment deleted "purity of breed" from the second sentence of the first paragraph and substituted "department of livestock" for "livestock sanitary board" throughout the section.

CHAPTER 26—REGULATION OF INDUSTRY TREATING OR FEEDING GARBAGE TO SWINE AND OTHER ANIMALS

46-2604. Power and authority of livestock sanitary board, etc.

Cross-References

Sanitary board abolished and functions transferred, sec. 82A-1304.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2706. Discontinuing county livestock protective committee.

46-2706. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in section 46-2701, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing that no district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953; amd. Sec. 2, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added "and further providing * * * indebtedness against it" at the end of this section.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.
46-2802. Selection of cattle protective committee members.
46-2803. Powers and duties of protective committees.
46-2804. Tax levy—deposit of proceeds.
46-2805. Removal of area from protective district—discontinuance of district—levy saved.
46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.
46-2807. Selection of cattle protective committee members.
46-2808. Powers and duties of protective committees.
46-2809. Tax levy—deposit of proceeds.
46-2810. Discontinuance of district—levy saved.

46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 46-2801 of this act, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing, that no district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "remove the area"; added "and further providing * * * indebtedness against it" at the end of the section; and made a minor style change.

46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965.

Title of Act

An act relating to the formation of a cattle protective district within any county in the state of Montana and providing for its formation and for its powers and duties, including organization, tax levy, and discontinuance.

46-2807. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three (3) members, who shall

be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

46-2808. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

46-2809. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965.

46-2810. Discontinuance of district—levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965; amd. Sec. 3, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added the last sentence.

CHAPTER 29—LIVESTOCK DEALERS

Section 46-2901. Definitions.
46-2902. Prohibited conduct.
46-2903. Licenses.
46-2904. Bonds.
46-2905. Inspection of records.
46-2906. Penalties.
46-2907. Powers and duties of livestock commission.
46-2908. Citations.

46-2901. Definitions. When used in this act:

(a) the term "livestock commission" or "commission" means the livestock commission of the state of Montana;

(b) the term "person" means an individual, partnership, corporation, association, or other form of business enterprise;

(c) the term "livestock" means cattle, sheep, swine, horses, mules, and goats;

(d) the term "livestock dealer" means any person who buys livestock (1) for his own account for purposes of resale or slaughter; or (2) for the account of others; or (3) for or on behalf of any dealer; provided, the term "livestock dealer" shall not include a farmer or rancher who buys or sells livestock in the ordinary course of their farming or ranching operation.

(e) the term "meat packer" shall be considered livestock dealer in this act.

History: En. Sec. 1, Ch. 414, L. 1971.

Title of Act

An act to provide for licensing of livestock dealers and establishing the procedure, rules and regulations therefor.

Cross-References

Livestock commission renamed and continued in department of livestock, sec. 82A-1303.

46-2902. Prohibited conduct. It shall be unlawful for any person to:

(a) carry on the business of a livestock dealer without a valid and effective license issued by the livestock commission under the provisions of section 3 [46-2903] of this act;

(b) carry on the business of a livestock dealer without filing and maintaining a valid and effective surety bond in conformity with section 4 [46-2904] of this act;

(c) carry on the business of a livestock dealer while his current liabilities exceed his current assets;

(d) willfully make or cause to make any false entry or statement of fact in any application, financial statement, or report filed with the livestock commission under this act.

History: En. Sec. 2, Ch. 414, L. 1971.

46-2903. Licenses. (a) Application; fees; renewal. Any person desiring to be licensed as a livestock dealer shall file annually with the livestock commission on or before July 1st, an application for a license to transact such business on a form prescribed by the commission. The application shall contain the following information:

(1) the nature of the business to be conducted by the applicant;

(2) the name or names of persons applying for license, together with their address and permanent residence;

(3) the full name of each member thereof, if the applicant is a firm, association or partnership or the names of the officers thereof if the applicant is a corporation;

(4) the post office and principal place of business of the applicant;

(5) if the applicant is a foreign corporation its principal place of business, without the state, the name of the state in which it is incorporated,

and that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(6) a copy of the financial statement showing current assets and current liabilities, as submitted to the bonding company to secure a bond under the terms of this act.

With the filing of an application for license, the applicant shall submit to the livestock commission the following applicable fee: as a livestock dealer—fee: twenty-five dollars ($25).

Whenever an applicant has paid the prescribed fee, the livestock commission, except as otherwise provided in this section, shall issue to such applicant a license which shall entitle the licensee to engage in the business specified in his application for a period of one (1) year, unless and until such license is suspended, revoked, or terminated in accordance with provisions of this act.

Each license shall be posted in a conspicuous place in or at the place of business of the licensee for inspection by any person. Each licensee under this act shall be issued a pocket card containing the license number of the applicant and his authority as a livestock dealer and such card shall be carried and maintained and be displayed upon demand as authority as a licensed livestock dealer.

All fees provided for under this act shall be paid in to the state treasury, shall be placed by the state treasurer to the credit of the livestock commission fund.

(b) Refusal of license. The livestock commission shall refuse to issue or renew a license if the applicant:

(1) has not filed a surety bond in the form and amount required under the provisions of section 4 [46-2904] of this act;

(2) has not satisfactorily demonstrated that his current assets exceed his current liabilities;

(3) has been found by the livestock commission to have failed to pay without reasonable cause obligations incurred in connection with livestock transactions;

(4) has violated the livestock laws of the state of Montana or the United States government;

(5) has practiced fraud in connection with the buying or receiving of animals or the selling, exchanging, or negotiating the sale of livestock or the weighing of the same;

(6) has failed to keep records of all purchases and sales or refused to grant inspection of said records by authorized agents of the livestock commission;

(7) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended 7 U.S.C. section 181, et seq., or

(8) has failed to comply with a lawful order or orders of the livestock commission.

(c) Suspension and revocation of license. Whenever the livestock commission finds that any livestock dealer has violated the provisions of subsection (b), (c) or (d) of section 2 [46-2902], section 3(b) [46-2903(b)], or section 5 [46-2905] of this act, the livestock commission may, by order, suspend the license of such offender for a period not to exceed one year, except that if the violation is repeated, the livestock commission may, by order, permanently revoke the license of the offender.

Before any license issued under this chapter shall be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had forthwith thereon before the livestock commission to determine whether such license should be suspended or revoked. The licensee shall be given notice of the time and place of such hearing and such notice shall be served by registered mail at the post-office address listed in the application. Such hearing shall be held not less than ten (10) days nor more than fifteen (15) days after the mailing of such notice. At the time and place set for the hearing, the livestock commission shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received shall promptly dismiss the proceedings or revoke or suspend such license. On an adverse ruling, the licensee may take appeal to the district court in the county where his principal place of business is located. The district court shall consider only the evidence presented at the livestock commission hearing and such additional evidence as the court, in its discretion, may permit or deem necessary.

(d) Termination. Any license issued under this act shall automatically terminate on the 30th day of June following the issuance of the same, unless the annual fee has been paid, and any such license shall automatically terminate upon termination of the surety bond covering the licensed operation.

History: En. Sec. 3, Ch. 414, L. 1971.

46-2904. Bonds. (a) Every livestock dealer applying for a license under this act shall file with the livestock commission and maintain a fully executed duplicate of a valid and effective bond in the form and amount set forth in this section, or if he is registered and bonded under the provisions of the Packers and Stockyards Act, 1921 (7 U.S.C. section 181 et seq.), shall file a statement in the form prescribed by the livestock commission evidencing that he is maintaining a valid and effective bond or its equivalent under said act.

(b) The amount of each livestock dealer bond filed with the livestock commission shall be not less than five thousand dollars ($5,000) or such larger amount specified by published regulations of the livestock commission and shall contain the following conditions:

"If the said principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by said principal for his own account or for the accounts of others and if the said principal shall safely keep and properly disburse all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others."

(c) Each livestock dealer bond filed with the livestock commission shall contain provisions that (1) any person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond, and (2) at least thirty (30) days' notice in writing shall be given to the livestock commission by the party terminating the bond.

History: En. Sec. 4, Ch. 414, L. 1971.

46-2905. Inspection of records. Every livestock dealer at all times shall keep and maintain suitable records, to disclose all purchases and sales of livestock. Each livestock dealer shall, during all reasonable times, submit any authorized agent of the livestock commission to have access to and to copy any and all of such records relating to his business.

History: En. Sec. 5, Ch. 414, L. 1971.

46-2906. Penalties. Any livestock dealer who violates the provisions of section (a) or (d) of section 2 [46-2902] of this act, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months, or a fine of not more than five hundred dollars ($500) or both such imprisonment and fine.

History: En. Sec. 6, Ch. 414, L. 1971.

46-2907. Powers and duties of livestock commission. The livestock commission is hereby authorized to enforce the provisions of this act and to promulgate, in the manner provided by law, such rules and regulations as it deems necessary or desirable to carry out the provisions of this act.

History: En. Sec. 7, Ch. 414, L. 1971.

46-2908. Citations. This act may be cited as the "Livestock Dealer Licensing Act."

History: En. Sec. 9, Ch. 414, L. 1971.

Separability Clause

Section 8 of Ch. 414, Laws 1971 read "Separability. If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby."

CHAPTER 30—UNLAWFUL DRIVING OF LIVESTOCK

Section 46-3001 to 46-3008. [Transferred from Title 94.]

46-3001 to 46-3008. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-3567 to 94-3569, 94-35-200, and 94-35-204 to 94-35-207. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
46-3001	94-3567
46-3002	94-3568
46-3003	94-3569
46-3004	94-35-200
46-3005	94-35-204
46-3006	94-35-205
46-3007	94-35-206
46-3008	94-35-207

TITLE 47—LOANS

Chapter 1. Loans for use or exchange—loan of money, 47-124.
2. Consumer Loan Act, 47-202, 47-204, 47-205, 47-210, 47-211, 47-214 to 47-216.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

47-101. (7702) Loan defined.

Cross-References

Retail installment sales, secs. 74-601 et seq.

47-124. (7725) **Legal interest.** Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971. Cal. Civ. C. Sec. 1917.

Amendments

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

The 1971 amendment inserted "or a law or ordinance or resolution of a public body fixing a different rate on its obligations" after "fixing a different rate" near the beginning of the section.

47-125. (7726) Same—any rate not exceeding ten per cent, etc.

Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. B-W Acceptance Corp. v. Torgerson, 234 F Supp 214, 216.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. Favero v. Wynacht, 140 M 358, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.

References

Favero v. Wynacht, 140 M 358, 371 P 2d 858, 867.

CHAPTER 2—CONSUMER LOAN ACT

Section 47-202. Definitions.
47-204. Scope—exemptions—invalidity of contracts in violation.
47-205. When loans in excess of $1,000 by licensee prohibited—supplementary license to make loans up to $2,500.
47-210. Rates and charges—refunds—past due amounts—excess charges, effect.
47-211. Installment payment—contract period.
47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.
47-215. Investigations, when—who may be investigated.
47-216. Annual examinations—cost of examinations—limitations.

47-201. Act, how cited.

Cross-References

Retail installment sales, secs. 74-601 et seq.

47-202. Definitions. Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a). * * * [Same as parent volume.]

(b) "License" shall mean one or both of the licenses provided for by this act.

(c) and (d). * * * [Same as parent volume.]

(e) "Consumer type loan business" shall mean the business of making loans of two thousand five hundred dollars ($2,500) or less generally repayable in substantially equal installments.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971.

Amendments

The 1971 amendment substituted "one or both of the licenses" for "the license" in subdivision (b); and increased the maximum loan specified in subdivision (e) from $1,000 to $2,500.

47-203. Office of consumer loan commissioner, etc.

Cross-References

Commissioner's office abolished and functions transferred, sec. 82A-402(2).

47-204. Scope—exemptions—invalidity of contracts in violation. (a) Scope; prohibiting engaging in the business of making loans of two thousand five hundred dollars ($2,500) or less, except after having obtained a license; exemptions. On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of two thousand five hundred dollars ($2,500) or less and

contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act apply to any such exempted person.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971.

Amendments

The 1971 amendment increased the maximum loan specified in subsection (a) from $1,000 to $2,500; deleted "relating to licensees" after "provisions of this act" near the end of subsection (a); and deleted "who is not licensed hereunder" from the end of subsection (a).

47-205. When loans in excess of $1,000 by licensee prohibited—supplementary license to make loans up to $2,500. No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars ($1,000) to any borrower or to any borrower and spouse except under the following circumstances and for the following charges: When any person holding a license provided for in section 47-206 desires to make loans for any amount in excess of one thousand dollars ($1,000) but not exceeding two thousand five hundred dollars ($2,500) the holder of such license provided for in section 47-206 may apply to the commissioner for a supplementary license and pay therefor an additional license fee of seventy-five dollars ($75) per calendar year or one-half (½) of said sum for any period less than six (6) months. The commissioner shall grant, on application, a supplementary license to a holder of a license provided for in section 47-206. Section 47-209 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same. The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in section 47-210 for the first one thousand dollars ($1,000) of the principal amount of any loan and may contract for and receive charges at rates not in excess of ten dollars ($10) per year per one hundred dollars ($100) on that part of the principal amount of any loan exceeding one thousand dollars ($1,000) but not exceeding two thousand five hundred dollars ($2,500). Said charges shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth (1/30) of a month. Provisions of section 47-210 relating to refunds, fees and charges and the other provisions of this act not in-

consistent with this section shall be applicable to loans made under authority of a supplementary license.

History: En. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971.

Amendments

The 1971 amendment added "or to any borrower and spouse except under the following circumstances and for the following charges" at the end of the first sentence, and added everything after the first sentence.

47-210. Rates and charges — refunds — past due amounts — excess charges, effect. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars ($1,000) in principal amount, charges at rates not in excess of twenty dollars ($20) per year per one hundred dollars ($100) on that part of the principal amount of the loan not exceeding three hundred dollars ($300); sixteen dollars ($16) per year per one hundred dollars ($100) on that part of the principal amount of the loan exceeding three hundred dollars ($300) but not exceeding five hundred dollars ($500), and twelve dollars ($12) per year per one hundred dollars ($100) on that part of the principal amount of the loan in excess of five hundred dollars ($500) but not exceeding one thousand dollars ($1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of subsection (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

Cross-References

Applicability of finance charge limitation imposed by retail installment sales act, secs. 74-602, 74-608.

47-211. Installment payment—contract period. No licensee shall enter into any contract of loan of three hundred dollars ($300) or less, exclusive of charges, under this act which the borrower agrees to make any scheduled repayment of principal more than twenty-one (21) calendar months from the date of making such contract, nor any contract of loan for more than three hundred dollars ($300) to and including one thousand dollars ($1,000) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than twenty-five (25) calendar months from the date of making, nor any contract of

loan for more than one thousand dollars ($1,000) to and including two thousand dollars ($2,000) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than thirty-seven (37) calendar months from the date of making, nor any contract of loan for more than two thousand dollars ($2,000) to and including two thousand five hundred dollars ($2,500) exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than thirty-seven (37) calendar months from the date of making. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five (45) days of the date of the loan and the charges for the number of days in excess of thirty (30) from the date of making may be added to the scheduled amount of said installments.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971.

Amendments

The 1971 amendment inserted "to and including one thousand dollars ($1,000)" in the first sentence, and added to the first sentence the provisions relating to loans of more than $1,000.

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy. (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars ($300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance and credit disability insurance. Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be pro-

vided by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars ($300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed two thousand five hundred dollars ($2,500).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971.

Amendments

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars ($300) or less, and such amount of three hundred dollars ($300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted subsection (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

The 1971 amendment substituted "property" for "tangible personal property" after "may require a borrower to insure" in the first sentence of subsection (c); inserted "and credit disability insurance" in subsection (d); substituted "two thousand five hundred dollars ($2,500)" for "one thousand dollars ($1,000)" at the end of subsection (d); and made minor changes in phraseology.

Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

47-215. Investigations, when—who may be investigated. The commissioner or his duly authorized representatives may at any time investigate any transaction with borrowers and may examine the books, accounts and records in this state to discover violations of this act by (1) any licensee (2) any person who advertises for, solicits or holds himself as willing to make loans in amounts of two thousand five hundred dollars ($2,500) or less, or (3) any person whom the commissioner has reason to believe is violating or is about to violate the provisions of this act.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971.

Amendments

The 1971 amendment increased the limit specified in clause (2) from $1,000 to $2,500, and made a minor change in punctuation.

47-216. Annual examinations—cost of examinations—limitations. The commissioner shall make an annual examination of the books, accounts and records of every licensee in so far as they relate to transactions with borrowers under this act and may make such additional examinations as the commissioner deems necessary. The expenses of the commissioner incurred in the examination of the books and records of the licensees, shall be charged at the rate of one hundred dollars ($100) per man per day required to conduct the examinations of the respective licensees. Each licensee shall be billed by the commissioner for the amount so charged to such licensee. If said charge is not paid within thirty (30) days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971.

Amendments

The 1971 amendment increased the charge specified in the second sentence from $60 to $100 per man per day, and made minor changes in phraseology.

TITLE 48—MARRIAGE

Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-134, 48-136, 48-137, 48-142 to 48-150.
2. Annulling marriage, 48-202, 48-203, 48-207.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

Section 48-118.1. Application for license.
48-134. Proof of age—premarital test certificate required of applicants for marriage license.
48-136. Certificates from other state or for military personnel, when acceptable.
48-137. Definition of test—rules and regulations.
48-142. Legislative intent—public policy.
48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.
48-144. Application for marriage license—form.
48-145. Advice to license applicants of legislative intent.
48-146. License required for marriage—place of ceremony—county where license issued.
48-147. Applicants under influence of liquor or drug.
48-148. Applicants delinquent in support obligations.
48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.
48-150. Validity of foreign marriages.

48-101. (5695) What constitutes marriage.

Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

Common-law Marriage

Finding that claimant and deceased workman had been married at common law was not supported by evidence, instances of their cohabitation warranting conclusion of meretricious relations as easily as any other. Miller v. Townsend Lumber Co., 152 M 210, 448 P 2d 148.

Man and woman who exchanged wedding rings, mutually declared their marriage, and thereafter openly lived together, were legally married even though wife continued to use her previous name for business purposes. Estate of Swanson, — M —, 502 P 2d 33.

In view of statute recognizing consensual or common-law marriage, presumption that man and woman deporting themselves as husband and wife have entered into lawful contract of marriage is itself proof of marriage, and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with the presumed fact; presumption was not overcome by the fact that mother claimed a ceremonial marriage and produced no evidence of mutual consent to common-law marriage. Spradlin v. United States, 262 F Supp 502.

Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term consortium. Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 73; Dutton v. Hightower & Lubrecht Constr. Co., 214 F Supp 298, 300.

Under this section and section 36-101 a woman by her marriage obtains a contractual right to consortium. Dutton v. Hightower & Lubrecht Constr. Co., 214 FSupp 298, 300, distinguished in Hall v. United States, 266 F Supp 671.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-111. (5705) Subsequent marriage—when illegal and void.

Prosecution for Bigamy

Although bigamous marriage may be void from beginning under this section for civil purposes, it nevertheless renders subsequent marriage bigamous under section 94-701 for criminal purposes, unless defendant can show that previous bigamous marriage was pronounced void, annulled or dissolved by competent court as provided under section 94-702. Crosby v. Ellsworth, 431 F 2d 35.

Voidness of Former Marriage

Under section 94-702 voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness cannot be made under this section by the person involved to avoid being charged with the crime of bigamy under sections 94-701 and 94-702. State v. Crosby, 148 M 307, 420 P 2d 431, 433.

48-113. (5707) Repealed.

Repeal

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-117, 48-118. (5711, 5712) Repealed.

Repeal

These sections (Secs. 72, 73, Civ. C. 1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. Application for license. An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima facie evidence of his authority to issue the said marriage license within the five (5) day period. The judge or judges of any judicial district may delegate authority to the clerk or clerks of the district court within said district for the purpose of making the determination and entering the order that the five (5) day period may be waived.

History: En. Sec. 1, Ch. 71, L. 1961; amd. Sec. 10, Ch. 232, L. 1963; amd. Sec. 1, Ch. 50, L. 1971.

Amendments

The 1963 amendment added the second proviso to the first sentence.

The 1971 amendment added the last sentence, providing for delegation of authority to clerks of court.

48-118.2. Repealed.

Repeal

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-120. (5714) License—when refused.

Compiler's Notes

Section 48-118 referred to in this section, was repealed by Sec. 12, Ch. 232, Laws of 1963. For present law, see sec. 48-143.

48-121. (5715) Repealed.

Repeal

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-134. Proof of age—premarital test certificate required of applicants for marriage license. (1) Before a person, who is authorized by law to issue marriage licenses, shall issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age, and, if such applicant is a minor, the consent required by section 48-118, and shall also file with him a certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than twenty (20) days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is validly able to obtain a marriage license in this state is also validly able to give his or her consent to any examinations and tests required by this act. In submitting the blood specimen to the laboratory, the physician, or any other person authorized by the laws of Montana to make such a certificate, shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973.

Compiler's Notes

Section 48-118, referred to in subsection (1), was repealed by Sec. 12, Ch. 232, Laws 1963. For present law, see sec. 48-143.

Amendments

The 1973 amendment divided the former section into subsections (1) and (2); deleted "as may be necessary for the discovery of syphilis" following "serological test" in subsection (1); and made minor changes in style and phraseology.

48-136. Certificates from other state or for military personnel, when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received a standard serological test outside of Montana, if such examinations and tests are performed not more than twenty (20)

days before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel, if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service; and the certificates state the examinations are standard serological tests and were performed not more than twenty (20) days before the issuance of the marriage license.

History: En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973.

Amendments

The 1973 amendment inserted "standard" before "serological" in the first and second sentences; substituted "armed forces" for "army or navy" in the second sentence; and made minor changes in style and phraseology.

48-137. Definition of test—rules and regulations. For the purpose of this act, a standard serological test shall be a test for syphilis, rubella immunity, approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department of health and environmental sciences or a laboratory approved by that department. Any other state, United States public health service or United States armed forces laboratory shall be considered approved for the purposes of this act. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973.

Amendments

The 1973 amendment inserted "rubella immunity," in the first sentence; substituted "department of health and environmental sciences" for "Montana state board of health" throughout the section; substituted "armed forces" for "army or navy" in the third sentence; and made minor changes in style, phraseology and punctuation.

48-142. Legislative intent—public policy. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 1, Ch. 232, L. 1963.

Title of Act

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses

where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages. (1) Every male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is under the age of eighteen (18), no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) or a female under the age of eighteen (18) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the aplication is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

History: En. Sec. 2, Ch. 232, L. 1963; amd. Sec. 13, Ch. 240, L. 1971; amd. Sec. 20, Ch. 94, L. 1973.

Amendments

The 1971 amendment made changes throughout the section to increase the age of consent from eighteen for males and sixteen for females to nineteen for both parties.

The 1973 amendment made changes throughout the section to reduce the age of consent from nineteen to eighteen for both males and females.

48-144. Application for marriage license—form. The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana
County of _____

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the _____ of _____ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant _____

Signature of Female applicant _____

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

From the Male Applicant	From the Female Applicant
Full name _____	Full name _____
Race or Color _____	Race or Color _____
Usual Residence _____	Usual Residence _____
Street address or R. F. D. No.	Street address or R. F. D. No.
_____ _____	_____ _____
City or town, county, state, country	City or town, county, state, country
When did your residence in this county begin? _____	When did your residence in this county begin? _____
Have there been any interruptions in your residence in this county since that date? _____	Have there been any interruptions in your residence in this county since that date? _____
Date of birth _____ Age____	Date of birth _____ Age____
month day year last birthday	month day year last birthday
Usual occupation _____	Usual occupation _____
Industry or business _____	Industry or business _____
Place of birth _____	Place of birth _____
Religious denomination _____	Religious denomination _____
(not compulsory)	(not compulsory)
Full name of FATHER _____	Full name of FATHER _____
Race or color _____	Race or color _____
Residence _____	Residence _____
Occupation _____	Occupation _____
Birthplace _____	Birthplace _____
Full name of MOTHER _____	Full name of MOTHER _____
Race or color _____	Race or color _____

Residence _____
Occupation _____
Birthplace _____
Maiden name of MOTHER _____
Male applicant affirms this is his _____ marriage.
number
Previous marriages were ended by: _____ _____ _____
manner date place
_____ _____ _____
_____ _____ _____
Children by prior marriages _____
_____
Are you presently in default of a legal obligation to support lawful dependent(s)? _____
Are you under the influence of intoxicating liquor or narcotic drug? _____
Your blood relationship to other applicant, if any? _____
If prior application rejected in another county, state place, reasons and date: _____
_____
_____
_____
Sworn and subscribed to before me this _____ day of _____
_____ A.D., 19____
_____
Signature
_____
Title
Marriage to take place _____
date
_____
place (city and county)
Application filed _____
date
License issued _____
date

Residence _____
Occupation _____
Birthplace _____
Maiden name of MOTHER _____
Female applicant affirms this is her _____ marriage.
number
Previous marriages were ended by: _____ _____ _____
manner date place
_____ _____ _____
_____ _____ _____
Children by prior marriages _____
_____
Are you presently in default of a legal obligation to support lawful dependent(s)? _____
Are you under the influence of intoxicating liquor or narcotic drug? _____
Your blood relationship to other applicant, if any? _____
If prior application rejected in another county, state place, reasons and date: _____
_____
_____
_____
_____
Future Address
Enter here exact future address after marriage, if known _____
_____
street address
_____ _____
city or town state
_____

History: En. Sec. 3, Ch. 232, L. 1963.

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part

of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 4, Ch. 232, L. 1963.

48-146. License required for marriage—place of ceremony—county where license issued. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the

applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall

rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

48-150. Validity of foreign marriages. (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

Repealing Clause

Section 12 of Ch. 232, Laws 1963 read "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R. C. M., 1947, are repealed."

48-151. Repealed.

Repeal

This section (Sec. 11, Ch. 232, L. 1963), relating to the waiting period after divorce, was repealed by Sec. 1, Ch. 63, Laws 1967.

CHAPTER 2—ANNULLING MARRIAGE

Section 48-202. Causes for annulling marriages.
48-203. Actions therefor—when and by whom commenced.
48-207. Legitimacy of children unaffected by annulment—custody and support orders.

48-201. (5728) Void marriages.

Necessity for Judicial Declaration

In view of statute providing that either party to void marriage may have it declared so judicially, former statute making it unlawful to marry again until six months after a judgment of divorce meant that marriage in violation thereof should be void only from time its nullity shall be declared so judicially. State ex rel. Angvall v. District Court, Thirteenth Judicial District, 151 M 483, 444 P 2d 370.

48-202. (5729) Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was con-

tracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

48-203. (5730) **Actions therefor—when and by whom commenced.** An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

48-204, 48-205. (5731, 5732) **Repealed.**

Repeal

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-207. Legitimacy of children unaffected by annulment—custody and support orders. A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

History: En. Sec. 3, Ch. 169, L. 1963.

Repealing Clause

Section 4 of Ch. 169, Laws 1963 read "Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-102. (8739) When the reason of a rule ceases, so should the rule itself.

Change in Trial Judges

Rule that appellate court will not ordinarily disturb findings of fact of trial court where there is conflict in evidence is not applicable where deciding judge was not judge who heard testimony. Kostbade v. Metier, 150 M 139, 432 P 2d 382.

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 74.

49-104. (8741) One must not change his purpose to the injury of another.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-106. (8743) One must so use his own rights as not to infringe upon the rights of another.

References

State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274; Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.

Loss of Right of Survivorship

Where husband feloniously killed his wife, he did not acquire by right of survivorship her share of property held jointly with him, but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. In re Cox' Estate, 141 M 583, 380 P 2d 584.

Wife who feloniously killed her husband did not acquire by right of survivorship his share of property held jointly with her, but took the property under a constructive trust. Sikora v. Sikora, — M —, 499 P 2d 808.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. Lapke v. Hunt, 151 M 450, 443 P 2d 493.

References

Cited in Doull v. Wohlschlager, 141 M 354, 377 P 2d 758, 765; Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706; Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-113. (8750) He who takes the benefit must bear the burden.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. Lapke v. Hunt, 151 M 450, 443 P 2d 493.

49-114. (8751) One who grants a thing is presumed to grant also whatever is essential to its use.

References

Thisted v. Country Club Tower Corp., 145 M 87, 405 P 2d 432.

49-115. (8752) For every wrong there is a remedy.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432; Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-124. (8761) The law neither does nor requires idle acts.

Contract of Purchase

Where purchaser conditioned annual payment on performance of certain acts by vendor contained in contract, and subsequently brought suit for breach of contract when vendor did not perform such acts, trial court properly entered judgment for vendor on evidence that purchaser, prior to payment, was going to insist on performance by vendor of other acts not contained in contract, since performance of acts specified in contract would have been idle and under this section law does not require performance of idle acts. Quayle v. Counts, 155 M 57, 466 P 2d 911.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

Contract of Sale

In vendor's action against subsequent bona fide purchaser to determine ownership and right to possession of an airplane, vendor was estopped to challenge sale by vendee by failing to record title document to avoid transfer tax, making no inquiry for a number of months about the plane, which he allowed vendee to have, even though the payments were due under the contract, and failing to make a diligent effort to recover the plane after the payments became due. Lakes v. Orley, 148 M 325, 420 P 2d 151, 153.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted the premium on bond. Lapke v. Hunt, 151 M 450, 443 P 2d 493.

TITLE 50—MINES AND MINING

Chapter 1. Safety in mines other than coal mines, 50-101, 50-102, 50-108, 50-118, 50-119.
7. Location and record of mining and millsite claims, 50-701 to 50-702.1, 50-704.
8. Mining—rights of way, 50-813, 50-815, 50-816.
10. Strip mining and reclamation, 50-1034 to 50-1057.
11. Dredge mining—preservation of lands, Repealed—Section 116, Chapter 428, Laws of 1973.
12. Reclamation of mining lands, 50-1201 to 50-1224.
13. Notice to landowner of surface operations, 50-1301 to 50-1306.
14. Strip-mined coal conservation, 50-1401 to 50-1409.
15. Open cut mining, 50-1501 to 50-1516.

CHAPTER 1—SAFETY IN MINES OTHER THAN COAL MINES

Section 50-101. Inspectors of metal and nonmetallic mines—employment.
50-102. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.
50-108. To what mines act is applicable.
50-118. Violation of the act—penalties.
50-119. Definitions.

50-101. (3418) **Inspectors of metal and nonmetallic mines—employment.** The industrial accident board shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R. C. M. 1921; amd. Sec. 1, Ch. 310, L. 1971.

Amendments

The 1971 amendment rewrote this section. For previous text, see parent volume.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

50-102. (3419) **Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.** (a) The board is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the board shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the board find that the conditions or prac-

tices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below, whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the board shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a board order, the board may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the board shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the board for a hearing, revision, or annulment of such order. Whenever the board after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling the order under review.

(i) An operator notified of an order made pursuant to section 50-102 (d) may apply to the board for a hearing or revision of such order. If the board finds that there was no violation, it shall make an order annulling the order under review. If the board finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the board finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the board under section 50-102, all actions which the board or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R. C. M. 1921; amd. Sec. 2, Ch. 310, L. 1971.

Amendments

The 1971 amendment rewrote this section. For previous text, see parent volume.

50-103 to 50-107. (3420 to 3424) **Repealed.**

Repeal

Sections 50-103 to 50-107 (Sec. 588, Pol. C. 1895; Secs. 2 to 5, Ch. 98, L. 1903), relating to inspections and investigation of mine safety, were repealed by Sec. 6, Ch. 310, Laws 1971.

50-108. (3425) **To what mines act is applicable.** This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors,

lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the board, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of men employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R. C. M. 1921; amd. Sec. 3, Ch. 310, L. 1971.

Amendments

The 1971 amendment rewrote the first portion of the section. For previous version, see parent volume.

50-109 to 50-117. (3426 to 3434) **Repealed.**

Repeal

Sections 50-109 to 50-117 (Sec. 590, Pol. C. 1895; Secs. 3650 to 3654, Pol. C. 1895; Secs. 1 to 3, Ch. 72, L. 1911), relating to safety and sanitary standards in mines and penalties for violations, were repealed by Sec. 6, Ch. 310, Laws 1971.

50-118. (3435) **Violation of the act—penalties.** (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the board or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the board to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the board any information or report requested by the board and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the board in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the board or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the board to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the board any information or report requested by the board and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars ($100), or more than three thousand dollars ($3,000), or by imprisonment in the county jail not exceeding six (6) months, or

both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R. C. M. 1921; amd. Sec. 4, Ch. 310, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

50-119. Definitions. "Authorized representative" means mine inspector or any other person employed or authorized by the industrial accident board to perform any and all duties under this act. "Board" means the industrial accident board of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written. "Inspector" means a person or persons employed by the industrial accident board to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the board, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the board, or any other determination or decision made by the board.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971.

Title of Act

An act amending sections 50-101, 50-102, 50-108, and 50-118, R. C. M., 1947, adding section 50-119 and repealing sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116, 50-117, R. C. M., 1947, to update the law so that it conforms and is equal to the Federal Metal and Nonmetallic Safety Act in order that Montana may qualify as and have what is known as a "state approved plan."

Repealing Clause

Section 6 of Ch. 310, Laws 1971 read "Sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116 and 50-117 are hereby repealed."

CHAPTER 4—REGULATION OF COAL MINING INDUSTRY—COAL MINING CODE

50-402. (3448) Coal mine inspector, etc.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

50-408, 50-409. (3454, 3455) Repealed.

Repeal

Sections 50-408 and 50-409 (Secs. 10, 11, Ch. 120, L. 1911), relating to the testing of coal mine scales, were repealed by Sec. 43, Ch. 99, Laws 1969.

50-412. (3459) Board of examiners of applicants, etc.

Cross-References

Boards abolished and functions transferred, sec. 82A-1005(3).

CHAPTER 5—REGULATION OF COAL MINING INDUSTRY—COAL MINING CODE CONTINUED

50-502. (3516) Mine examiners and their duties.

Cross-References

Units of industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

CHAPTER 6—REGULATIONS FOR SALE AND MARKETING OF COAL

50-603. (3546.3) Repealed.

Repeal

Section 50-603 (Sec. 3, Ch. 104, L. 1927), relating to the weight of coal, was repealed by Sec. 43, Ch. 99, Laws 1969.

CHAPTER 7—LOCATION AND RECORD OF MINING AND MILLSITE CLAIMS

Section 50-701. Discovery—notice—marking boundaries—compliance with federal law.
50-702. Record of certificate of location.
50-702.1. Filing of false mining claims prohibited—punishment.
50-704. Recording of affidavit of performance of annual work.

50-701. (7365) Discovery—notice—marking boundaries—compliance with federal law. Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner, viz.:

1. * * * [Same as parent volume.]

2. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be

readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides; (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound; (3) A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height; or (4) A boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

3. Within sixty (60) days after posting such notice, the locator shall comply with the United States mining laws.

History: Earlier acts were those of Feb. 11, 1876, governing location of quartz claims, appearing as Secs. 1477 and 1478, 5th Div. Comp. Stat. 1887.

Ap. p. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R. C. M. 1921; amd. Sec. 1, Ch. 4, Ex. L. 1971. Cal. Civ. C. Sec. 1426.

Amendments

The 1971 amendment substituted a new subdivision 3 for the subdivision 3 appearing in the parent volume; corrected a typographical error; and made a minor change in style.

50-702. (7366) **Record of certificate of location.** Within sixty (60) days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated, and within twenty (20) days thereafter the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana. The record shall consist of a certificate of location for each claim containing:

1. The name of the lode or claim and whether located as a lode or placer claim.

2. The name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators.

3. The date of location, and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated (by projected survey lines if located in unsurveyed country).

4. The directions and distances from the discovery point which describe the claim.

The certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the sixty (60) day period, but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in section 50-713 affects the prima facie presumption created by this section.

History: Ap. p. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R. C. M. 1921; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted "and for the purpose of constituting constructive notice of the location" after "notice of location" in the first sentence of the introductory paragraph; added "and within twenty * * * successor agency" to the first sentence of the introductory paragraph; inserted "for each claim" in the second sentence of the introductory paragraph; added "and whether located as a lode or placer claim" to the end of subdivision 1; added "together with the post-office address of such locator or locators" to the end of subdivision 2; added "and the section * * * unsurveyed country" to the end of subdivision 3; substituted a new subdivision 4 for former subdivisions 4 and 5; deleted the designation of former subdivision 6 and made it the final paragraph; deleted the former first sentence of the present final paragraph; added the last two sentences to the final paragraph; and made a minor change in style.

The 1973 amendment deleted "and investments" following "department of state lands" near the end of the first sentence in the first paragraph; and made minor changes in style and phraseology.

Reference to Natural or Permanent Monument

Fact that location certificate did not refer to a natural or permanent monument was of no significance when contestant found a copy of the certificate at the entrance to the mine. McCarthy v. Morris, — M —, 497 P 2d 97.

50-702.1. Filing of false mining claims prohibited—punishment. Every person who shall offer any location certificate for a placer mining claim, or lode claim, or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself, or for any other person, or any person who shall procure others to do so, knowing that such claim, or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than five thousand dollars ($5,000), or by both.

History: En. Sec. 1, Ch. 135, L. 1973.

Title of Act

An act prohibiting the filing of false mining claims; providing for a penalty; and providing for an effective date.

Effective Date

Section 2 of Ch. 135, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

50-704. (7368) **Recording of affidavit of performance of annual work.** The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;

2. The location of the claim or claims by section, township, and range (by projected survey lines if located in unsurveyed country);

3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;

4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

5. The dates between which such work or improvements were effected;

6. At whose instance the work was done or the improvements made;

7. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Annual assessment work may be performed or caused to be performed at one (1) or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. If annual assessment work is performed or caused to be performed at one (1) or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

An affidavit of performance of annual assessment work must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been per-

formed and that the owner of the claim or claims has abandoned and surrendered same.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R. C. M. 1921; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973. Cal. Civ. C. Sec. 1426m.

Amendments

The 1971 amendment inserted "as permitted and defined by laws of the United States" in the introductory paragraph; substituted "must" for "may" after "forfeiture of the claim" in the introductory paragraph; substituted "ninety (90)" for "twenty" in the introductory paragraph; substituted "expiration of the federal annual assessment work period" for "annual work" in the introductory paragraph; inserted new subdivisions 2 and 3; redesignated former subdivision 2 as subdivision 4 and added to the end "or the verified * * * relied upon"; revised and reworded former subdivision 3 and redesignated it as subdivision 5; redesignated former subdivisions 4 and 5 as subdivisions 6 and 7; added the three paragraphs after the numbered subdivisions; made the former final paragraph into the fourth sentence of the present final paragraph; and made minor changes in phraseology.

The 1973 amendment deleted "not exceeding ten (10)" following "contiguous claims" in the first and second sentences of the first paragraph following the numbered clauses.

Amount of Work Required

Recorded affidavit was prima facie evidence that annual assessment work was done, and it was not important how much work was done. McCarthy v. Morris, — M —, 497 P 2d 97.

CHAPTER 8—MINING—RIGHTS OF WAY

Section 50-813. Eminent domain for open pit mining—agreement to purchase property required.
50-815. Measure of compensation for property.
50-816. Notice to owners of condemnation for open pit mining—filing of plat.

50-813. Eminent domain for open pit mining—agreement to purchase property required. Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open pit mining of the ores, metals or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within three hundred (300) yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within thirty (30) days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 93, chapter 99, Revised Codes of Montana, 1947, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973.

Amendments

The 1973 amendment substituted "all property" for "all residential property" after "agreeing to purchase" in the first sentence; increased the distance specified in the first sentence from 300 feet to 300 yards; and deleted "in a residential area" after "vacant lots" in the first sentence.

50-815. Measure of compensation for property. (1) The measure of compensation for the property located within three hundred (300)

yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open pit mining operations.

History: En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973.

Amendments

The 1973 amendment designated the former section as subsection (1); substituted "the property" and "similar property" in subsection (1) for "the residential property" and "similar residential property"; increased the distance specified in subsection (1) from 300 feet to 300 yards; and added subsection (2).

50-816. Notice to owners of condemnation for open pit mining—filing of plat. Any party seeking to condemn property for open pit mining purposes shall serve notice in writing on all owners of property within three hundred (300) yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

History: En. Sec. 4, Ch. 240, L. 1961; amd. Sec. 3, Ch. 304, L. 1973.

Amendments

The 1973 amendment substituted "owners of property" for "all residential property owners"; and increased the specified distance from 300 feet to 300 yards.

CHAPTER 9—CONSOLIDATION OF BOILER AND MINES INSPECTORS UNDER CONTROL OF INDUSTRIAL ACCIDENT BOARD

50-901. (3034) **Consolidation boiler, mine and coal mine inspectors.**

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

CHAPTER 10—STRIP MINING AND RECLAMATION

Section 50-1034. Short title.
50-1035. Policy of state—findings.
50-1036. Definitions.
50-1037. Orders and rules of board—hearings.
50-1038. Administration—functions of department.
50-1039. Permit required to engage in strip mining—application for permit—contents—fee—bond.
50-1040. Increase or reduction in area—application—fee—bond.
50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond.
50-1042. Refusal of permit—grounds.
50-1043. Reclamation operations—submission and action on plan.
50-1044. Area mining required—grading and revegetation—release of bond—alternative plan.
50-1045. Planting of vegetation following filling of stripped area.
50-1046. Time of commencement of reclamation.
50-1047. Planting report—inspection and release of bond.
50-1048. Vegetation planted as property of landowner.

50-1049. Annual report of reclamation work—map.
50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.
50-1051. Successive operators.
50-1052. Receipts paid into special fund—use of fund.
50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands.
50-1054. Reclamation of lands after bond forfeited.
50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies.
50-1056. Violation—civil penalty—injunction—misdemeanor.
50-1057. Procedure for hearings and appeals.

50-1001 to 50-1017. Repealed.

Repeal

Sections 50-1001 to 50-1017 (Secs. 1-4, Ch. 245, L. 1967; Secs. 1-13, Ch. 199, L. 1969), relating to strip coal mining and reclamation of lands, were repealed by Sec. 18, Ch. 224, Laws 1971.

50-1018 to 50-1033. Repealed.

Repeal

Sections 50-1018 to 50-1033 (Secs. 1 to 16, Ch. 224, L. 1971), relating to open cut or strip mined land reclamation, were repealed by Sec. 26, Ch. 325, Laws 1973 and Sec. 17, Ch. 326, Laws 1973. For present law, see secs. 50-1034 to 50-1057 and 50-1501 to 50-1516. Chapter 391, Laws of 1973 purported to amend section 50-1032 but was void under section 43-515.

50-1034. Short title. This act shall be known and may be cited as "The Montana Strip Mining and Reclamation Act."

History: En. Sec. 1, Ch. 325, L. 1973.

Title of Act

An act creating "The Montana Strip Mining and Reclamation Act" and providing for the control of prospecting for and the strip mining of coal, clay, phosphate rock, and uranium; providing for permits, reclamation plan requirements, methods of operation, and penalties; providing for the termination of reclamation contracts entered into under chapter 245, Laws of Montana, 1967; repealing sections 50-1018 through 50-1033, R. C. M. 1947; and providing an effective date.

50-1035. Policy of state—findings. It being the declared policy of this state and its people

—to maintain and improve the state's clean and healthful environment for present and future generations,

—to protect its environmental life-support system from degradation,

—to prevent unreasonable degradation of its natural resources,

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and

recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for surface reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. Sec. 2, Ch. 325, L. 1973.

Compiler's Notes

Chapter 325, Laws of 1973 became effective March 16, 1973.

50-1036. Definitions. Unless the context requires otherwise in this act:

(1) "mineral" means coal, clay, phosphate rock, and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose

of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the mineral that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in Title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five per cent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

History: En. Sec. 3, Ch. 325, L. 1973.

50-1037. Orders and rules of board—hearings. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

History: En. Sec. 4, Ch. 325, L. 1973.

50-1038. Administration—functions of department. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, highwall reduction, topsoiling and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(5) shall make investigations and inspections necessary to ensure compliance with this act;

(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

History: En. Sec. 5, Ch. 325, L. 1973.

50-1039. Permit required to engage in strip mining—application for permit—contents—fee—bond. (1) An operator may not engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided

for in section 10 [50-1043] of this act, and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 9 and 13 [50-1042 and 50-1046] of this act.

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with subsection (2) of section 17 [50-1050] and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten per cent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (2) of section 17 [50-1050] and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (B.T.U.)

content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set. Each cross-section shall depict the thickness and geological character of all known strata beginning with the topsoil;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the drainage plan on and away from the area of land affected. This plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally

of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars ($50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars ($200) nor more than twenty-five hundred dollars ($2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars ($2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. Sec. 6, Ch. 325, L. 1973.

50-1040. Increase or reduction in area—application—fee—bond. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act and shall pay an application fee of fifty dollars ($50) and shall file with the department a supplemental bond in the amount to be determined under section 6 [50-1039] for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each

acre reduced, but in no case shall the bond be reduced below two thousand dollars ($2,000), except as provided in subsection (5) of section 6 [50-1039].

History: En. Sec. 7, Ch. 325, L. 1973.

50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond. (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisities must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars ($100). This fee shall be used as a credit toward the strip mining permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining reclamation and revegetation bonds under this act.

(5) In the event that the holder of a prospecting permit desires to strip mine the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining operators under this act.

History: En. Sec. 8, Ch. 325, L. 1973.

Compiler's Notes

Chapter 325, Laws of 1973, became effective March 16, 1973.

50-1042. Refusal of permit—grounds. (1) An application for a prospecting or strip mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for prospecting or strip mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting or strip mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial

or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting or strip mining permit application before it can be approved.

History: En. Sec. 9, Ch. 325, L. 1973.

50-1043. Reclamation operations—submission and action on plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act, shall reclaim and revegetate the land affected by his operation. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, topsoiling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and plans of backfilling, grading, highwall reduction, topsoiling and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, landslides, water pollution, and hazards dangerous to life and property. The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and sections 11, 12 and 13 [50-1044, 50-1045 and 50-1046] of this act. The plan shall be submitted to the department and the department shall notify the applicant by registered mail within one hundred twenty (120) days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the one hundred twenty (120) days an additional one hundred twenty (120) days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable and it may propose modifications, delete areas, or reject the entire plan. A landowner, operator, or any person aggrieved by the decision of the department may, by written notice, request a hearing by the board. The board shall notify the person by registered mail within twenty (20) days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(2) In addition to the method of operation, grading, backfilling, highwall reduction, topsoiling and reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) seal off, as directed by rules, any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff water so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, surface damage to adjacent lands and water pollution, ensure public safety, and for other purposes.

(3) An operator may not throw, dump, pile or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6 [50-1039], or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6 [50-1039].

History: En. Sec. 10, Ch. 325, L. 1973.

50-1044. Area mining required—grading and revegetation—release of bond—alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, and topsoiling have been completed and approved by the department, the commissioner may release so

much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars ($200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 6 (2) (k) [50-1039 (2) (k)].

History: En. Sec. 11, Ch. 325, L. 1973.

50-1045. Planting of vegetation following filling of stripped area. After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

History: En. Sec. 12, Ch. 325, L. 1973.

50-1046. Time of commencement of reclamation. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current.

History: En. Sec. 13, Ch. 325, L. 1973.

50-1047. Planting report—inspection and release of bond. (1) At least sixty (60) days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

(a) identification of the operation;

(b) the type of planting or seeding, including mixtures and amounts;

(c) the date of planting or seeding;

(d) the area of land planted;

(e) any other relevant information the department requires.

(2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 [50-1045] of this act.

History: En. Sec. 14, Ch. 325, L. 1973.

50-1048. Vegetation planted as property of landowner. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this act or rules adopted under this act, become the property of the landowner, after complete release of the bond, unless the operator and the landowner agree otherwise.

History: En. Sec. 15, Ch. 325, L. 1973.

50-1049. Annual report of reclamation work—map. Within sixty (60) days after each date of expiration of a permit, the operator shall annually file with the department a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by him, and any other information required by the rules of the department and the board. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by results of the operation.

History: En. Sec. 16, Ch. 325, L. 1973.

50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator

has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

History: En. Sec. 17, Ch. 325, L. 1973.

50-1051. Successive operators. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this act as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this act, and the successor operator assumes as part of his obligation under this act, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973.

50-1052. Receipts paid into special fund—use of fund. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. Sec. 19, Ch. 325, L. 1973.

50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 20, Ch. 325, L. 1973.

50-1054. Reclamation of lands after bond forfeited. The board may reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the strip mining and reclamation fund for such purposes.

History: En. Sec. 21, Ch. 325, L. 1973.

50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies. A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section.

History: En. Sec. 22, Ch. 325, L. 1973.

50-1056. Violation—civil penalty—injunction—misdemeanor. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for the violation, and an additional civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000). Each day on which a violation occurs constitutes a separate offense.

History: En. Sec. 23, Ch. 325, L. 1973.

50-1057. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

History: En. Sec. 24, Ch. 325, L. 1973.

Separability Clause

Section 25 of Ch. 325, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 26 of Ch. 325, Laws 1973 read "Sections 50-1018 through 50-1033, R. C. M. 1947, are repealed."

Temporary Provisions

Section 27 of Ch. 325, Laws 1973 read "Every operator shall within ninety (90) days after the effective date of this act file with the department an application for a permit."

Section 28 of Ch. 325, Laws 1973 read "Ninety (90) days after the effective date of this act, the state shall proceed to cancel, according to their terms, all existing contracts entered into pursuant to chapter 245, Laws of Montana, 1967. If the contract does not provide according to its terms, for the cancellation, it shall be terminated and void within two hundred seventy (270) days from the effective date of this act."

Effective Date

Section 29 of Ch. 325, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

CHAPTER 11—DREDGE MINING—PRESERVATION OF LANDS

(Repealed—Section 116, Chapter 428, Laws of 1973)

50-1101 to 50-1114. Repealed.

Repeal

Sections 50-1101 to 50-1114 (Secs. 1 to 14, Ch. 123, L. 1969), relating to dredge mining and preservation of lands, were repealed by Sec. 116, Ch. 428, Laws 1973.

Unconstitutionality

This act is repugnant to section 23, article V of the 1889 constitution, in that it purports to regulate sluice washing without mentioning that process in its title; and it violates the fourteenth amendment to the United States Constitution in that it exempts open pit mining, strip coal mining and certain other types of operations without valid reason for a distinction. Sigety v. State Board of Health, 157 M 48, 482 P 2d 574, distinguished in 490 P 2d 221, 226.

CHAPTER 12—RECLAMATION OF MINING LANDS

Section 50-1201. Legislative observations and finding.
50-1202. Purposes of act.
50-1203. Definitions.
50-1204. Administration—rules and regulations—employment of supervisors.
50-1205. Investigations, research and experiments in reclamation.
50-1206. Co-operation with other agencies—receipt and expenditure of funds.
50-1207. Exploration license and development permit—duration and renewal—requirements.
50-1208. Operating permit—fee—contents of application.
50-1209. Reclamation plan—accomplishment of specific activities.
50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation.
50-1211. Performance bond.
50-1212. Annual report of activities by permittee—annual fee.
50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands.
50-1214. Reasons for denial of permit.
50-1215. Resubmission with new reclamation plan.
50-1216. Appeals board—administrative remedies.
50-1217. Judicial review.
50-1218. Appeal to supreme court.
50-1219. Exemption of works performed prior to promulgation of rules and regulations.
50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor.
50-1221. Information obtained from applications confidential—admissible in hearings or proceedings.
50-1222. Violation a misdemeanor—penalties.
50-1223. Exemption of operations on federal lands.
50-1224. Exemption of sample collectors.

50-1201. Legislative observations and finding. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals takes place in diverse areas where geological, topographical, climatic, biological and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this act will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971.

Title of Act

An act requiring the licensing of persons engaged in mining exploration and related activities; requiring permits for the conduct of development, mining and related activities; providing for the reclamation of explored, developed, and mined land; providing for the administration and enforcement of said act by the board of state lands and investments; and providing for an appeal procedure; and providing an effective date.

50-1202. Purposes of act. The purposes of this act are to provide: (i) that the usefulness, productivity and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use; (ii) authority for co-operation between private and governmental entities in carrying this act into effect; (iii) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and (iv) priorities and values to the aesthetics of our landscape, waters and ground cover. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971.

50-1203. Definitions. As used in this act, unless the context indicates otherwise: (1) "Surface mining" shall mean and include all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and any and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of surface mined area" shall mean and include that area of land and surface water included within an operating permit actually disturbed by surface mining during each twelve-month period of time, beginning at the date of the issuance of the permit, and shall comprise and include the area from which overburden and/or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which, by virtue of such use, are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" shall mean and include that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and shall comprise that area from which the overburden, and/or minerals have been removed; tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from said operation and which has not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" shall mean and include all methods of mining other than surface mining.

(6) "Person" shall mean and include any person, corporation, firm, association, partnership or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" shall mean and include any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future usage, refinement or smelting.

(8) "Exploration" shall mean and include all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in section 20 [50-1220] and section 24 [50-1224] herein.

(9) "Development" shall mean and include all operations between exploration and mining.

(10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

(11) "Reclamation plan" shall mean and include the operator's written proposal, as required and approved by the board for reclamation of the land that will be disturbed, which proposal shall include to the extent practical at the time of application for a developing or operating permit: (a) a statement of the proposed subsequent use of the land after reclamation;

(b) Plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(c) Manner and type of revegetation or other surface treatment of disturbed areas;

(d) Procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) Method of disposal of mining debris;

(f) Method of diverting surface waters around the disturbed areas where necessary to prevent pollution of such waters or unnecessary erosion;

(g) Method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) Such maps and other supporting documents as may be reasonably required by the director;

(i) A time schedule for reclamation that meets the requirements of section 9 [50-1209] of this act.

(12) "Vegetative cover" as used in this act shall mean the type of vegetation, grass, shrubs, trees, or any other form of natural cover deemed suitable at time of reclamation.

(13) "Board" shall mean the Board of State Lands and Investments, or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "Director" or "administrator" shall mean the director of the Board of State Lands and Investments.

(15) "Small miner" shall mean any person, firm or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate.

History: En. Sec. 3, Ch. 252, L. 1971.

Cross-References

Board functions continued, sec. 82A-1103.

50-1204. Administration—rules and regulations—employment of supervisors. The board is charged with the responsibility of administering this act. In order to implement its terms and provisions, the board shall from time to time promulgate such rules and regulations as the board shall deem necessary. The board may delegate such powers, duties and functions to its director and staff members as it deems necessary for the performance of its duties as administrator of this act. The board shall employ experienced, qualified persons in the field of mined land reclamation, who for the purpose of this act, are hereinafter referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971.

50-1205. Investigations, research and experiments in reclamation. The board shall have the authority to conduct or authorize investigations, research, experiments and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971.

50-1206. Co-operation with other agencies—receipt and expenditure of funds. The board shall co-operate with other governmental and private agencies in this state and other states and agencies of the federal government, and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in section 9 [50-1209] of this act.

History: En. Sec. 6, Ch. 252, L. 1971.

50-1207. Exploration license and development permit—duration and renewal—requirements. (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in exploration or development in the state without first obtaining an exploration license or development permit from the board to do so, such license or permit to be issued for a period of one (1) year from date of issue and to be renewable from year to year on application therefor filed at any time within the thirty (30) days next preceding the expiration of the current license or permit and payment of like fee as required for a new license or permit; provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law.

(2) An exploration license shall be issued to any applicant therefor who shall: (i) pay a fee of five dollars ($5) to the board; (ii) agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the board, unless the applicant shall have applied for and been issued a development or operating permit for the lands so damaged; and (iii) not be in default of any other reclamation obligation under this law.

(a) Except as hereafter provided, the holder of such license shall not be compelled to disclose the area of his exploration operations, except where charged with a delinquency in performing reclamation obligations hereunder.

(b) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of said certificates to the board.

(3) A development permit shall be issued to any applicant therefor that shall meet the following requirements: (a) Payment of twenty-five dollars ($25) fee to the board;

(b) Submit a description of the area within which development is to be conducted;

(c) Submit a suitable map or aerial photograph showing topographic, cultural and drainage features;

(d) Submit a statement of proposed development methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(e) Submit an estimate of the acreage expected to be disturbed in the twelve (12) months following issue of the permit, together with a map of the general area of the development operations for a like period. If the board shall, on good cause, consider the operator's estimate of the quantity of surface to be disturbed to be more than twenty per cent (20%) below what the board considers correct in the circumstances, it may by order require the operator to increase the amount of his bond accordingly.

(f) Submit a proposed reclamation plan for lands to be disturbed in the next twelve (12) months.

(g) Submission of an affidavit as may be required by the board showing that any lands disturbed by exploration, development, or mining

in the state of Montana by applicant within two years prior to the application for said permit is or is in course of being reclaimed in accordance with the provisions of this act; or submission of an affidavit and such supporting documents and evidence as may be required by the board showing that any lands disturbed by exploration, development, or mining by applicant in the state of Montana during the two (2) years prior to the application for said permit will be restored in accordance with the provisions of this act.

(4) Following approval of a development plan, the operator shall be required to file a performance bond in accordance with provisions of this act.

(5) Employees of persons holding a valid license or permit under this act shall be deemed included in and covered by such license or permit.

(6) Upon proper application by the holder of an exploration license or development permit, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for development license or operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971.

50-1208. Operating permit—fee—contents of application. (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Any person, prior to receiving an operating permit from the board, must pay the basic permit fee of twenty-five dollars ($25) and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent required data by the rules and regulations:

(a) Name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners and the like and its resident agent for service of process, if required by law;

(b) Minerals expected to be mined;

(c) A proposed reclamation plan;

(d) Expected starting date of mining;

(e) A map showing the specific area to be mined and the boundaries of the land which will be disturbed; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) Types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) A plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

History: En. Sec. 8, Ch. 252, L. 1971.

50-1209. Reclamation plan—accomplishment of specific activities. (a) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than two (2) years after completion or abandonment of mining on said portion of mine complex.

(b) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without having previously obtained from the supervisor or director written approval of his proposed change.

(c) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(d) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(e) Where mining has left an open pit exceeding two (2) acres of surface area, and composition of the floor and/or walls of which pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan must include provisions which adequately provide for:

(1) Insulation of all faces from moisture of water contact by covering to a depth of two (2) feet or more with material or fill not susceptible itself to generation of such objectionable effluents; or

(2) Processing of any such objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level deemed safe to humans and the environment by the board; or

(3) Drainage of any such objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels deemed safe by the board before release from the settling basin; or

(4) Absorption and/or evaporation of objectionable effluents in the open pit itself; and

(5) Prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(f) Vegetative cover will be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(g) To the extent practical, the reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(h) A reclamation plan will be approved by the board if it adequately provides for the accomplishment of the activities heretofore specified.

History: En. Sec. 9, Ch. 252, L. 1971.

50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation. Upon receipt of an application for an operating permit the mining site shall be inspected by a supervisor. Within thirty-five (35) days of receipt of the application and reclamation plan by the board and receipt of the permit fee, the board shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies. Failure of the board to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned, unless the permit is suspended by the board as provided in this act. The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) To modify the requirements so they will not conflict with existing laws;

(b) The previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) The operator and the supervisor mutually agreed, in the field, to temporarily modify the reclamation plan, pending final approval by the board.

When one (1) operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this act as to such operation; provided, that both operators have complied with the requirements of this act and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this act.

History: En. Sec. 10, Ch. 252, L. 1971.

50-1211. Performance bond. Concurrently with issue of a permit, the board may provide the permittee with a list of corporate sureties acceptable to the board from whom the performance bond hereafter required can be obtained.

Upon receipt of a permit the permittee, other than a public or governmental agency, shall not commence operation until the permittee has deposited with the board an acceptable performance bond on forms prescribed and furnished by the board. This performance bond shall be a corporate surety bond executed in favor of the board by a corporation authorized to do a surety business in the state of Montana and approved by the board. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be developed or mined during the next twelve (12) month period and any previously developed or mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. The board shall have the authority to determine the amount of the bond that shall be required, and may refuse any bond not deemed adequate. In no case shall the amount of the bond be more than five hundred dollars ($500) per acre of the area above described or fraction thereof.

The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted pursuant thereto.

In lieu of the surety bond required by this section, the permittee may file with the board a cash deposit, negotiable securities acceptable to the board, or an assignment of a savings account in a Montana bank on an assignment form prescribed by the board.

Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the board. Notification shall be given upon completion of compliance or acceptance by the board of a substitute bond. In no event shall the liability of the permittee or surety exceed the amount of the surety bond required by this section.

A public or governmental agency shall not be required to post a bond under the terms of this chapter.

A blanket performance bond covering two (2) or more operations may be accepted by the board in lieu of separate bonds for each separate operation.

If adequate proof exists that a bond is unobtainable for any reason other than lack of fiscal responsibility on the operator's part from any source, the licensee's obligation to supply such bond shall be suspended until such time as a source for bonding is obtained.

Notwithstanding the foregoing, an applicant for a permit who shall, as part of his application, submit his duly acknowledged certificate that he will not, in the course of his entire operations in the state of Montana, exceed five (5) acres in aggregate of disturbed land unreclaimed, shall not be required to show financial capability to procure a performance bond as required by this section or thereafter to procure a corporate surety bond or make any in lieu deposit with the board therefor. Relief from such surety requirements shall in no wise relieve the permittee from any direct reclamation obligations hereunder. On acceptable showing

of hardship on the part of an applicant, the board may relieve any permittee within the classification first described in this paragraph from such technical showings under sections 3 [50-1203] (11) and 8 [50-1208] which the board considers may be waived without injury to the interest of the public.

History: En. Sec. 11, Ch. 252, L. 1971.

50-1212. Annual report of activities by permittee—annual fee. Within thirty (30) days after completion or abandonment of operations on an area under permit or within thirty (30) days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules and regulations of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of twenty-five dollars ($25) and shall file a report of activities completed during the preceding year on a form prescribed by the board, which report shall:

(a) Identify the permittee and the permit number;

(b) Locate the operation by subdivision, section, township and range, and with relation to the nearest town or other well-known geographic feature;

(c) Estimate acreage to be newly disturbed by operation in the next twelve (12) month period; and

(d) Update any maps previously submitted or specifically requested by the board. Such maps shall show:

(1) The permit area;

(2) The unit of disturbed land;

(3) The area to be disturbed during the next twelve (12) month period;

(4) If completed, the date of completion of operations;

(5) If not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(6) The date of beginning, amount and current status of reclamation performed during the previous twelve (12) months.

History: En. Sec. 12, Ch. 252, L. 1971.

50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands. Following receipt of the permittee's report, and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules and regulations.

The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within thirty (30) days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected; provided, that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend per-

formance periods referred to in this section and in section 9 [50-1209] of this act, for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

Within thirty (30) days after notification by the permittee and when in the judgment of the board reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within thirty (30) days after notification by the board, or if reclamation is not properly completed in conformance with the reclamation plan within two (2) years after completion or abandonment of operation on any fraction of the permit area, or such longer period as may have been authorized hereunder, or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within thirty (30) days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond.

In addition to the other liabilities imposed by this act, failure to commence action to remedy specific deficiencies in reclamation within thirty (30) days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within two (2) years, or such longer period as the board may permit on permittee's application therefor, or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.

History: En. Sec. 13, Ch. 252, L. 1971.

50-1214. Reasons for denial of permit. A permit may be denied for any of the following reasons:

(a) The plan of development, mining, or reclamation conflicts with the state water and air purification standards;

(b) The reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this act.

A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971.

50-1215. Resubmission with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971.

50-1216. Appeals board—administrative remedies. A licensee, permittee or applicant who has been aggrieved by any decision of the board shall have the right of appeal to an appeals board comprised of the following: one (1) member of the fish and game department; two (2) qualified mining engineers to be appointed by the governor, at least one (1) of whom shall not be an employee of the state or any agency or arm thereof; one (1) member from the state department of agriculture; one (1) member of the department of health; and one (1) member from the state department of planning and economic development; and one (1) member from the legal staff of the attorney general.

The appeal shall be instituted by filing a petition with the appeals board within thirty (30) days after the denial of the permit. The petition shall contain a statement of the reasons for which the petitioner is aggrieved, and after reasonable notice the petitioner or his attorney or agent shall be afforded a hearing before the appeals board thereon.

Within fifteen (15) days after the hearing, the appeals board shall notify the petitioner in writing of its decision and the reasons therefor.

History: En. Sec. 16, Ch. 252, L. 1971.

50-1217. Judicial review. A licensee, permittee or applicant aggrieved by a final decision of the appeals board is entitled to judicial review under this act. Proceedings for review shall be instituted by filing a petition in a district court within thirty (30) days after service of the final decision of the appeals board. Copies of the petition shall be promptly served upon the appeals board and all parties of record.

The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved and the ground or grounds upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled.

Within thirty (30) days after the service of the petition, or within further time allowed by the court, the appeals board shall transmit to the reviewing court the original or a certified copy of the entire record

of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

If, before the date set for hearing, application is made to the court by the appellant for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the appeals board, the court may order that the additional evidence be taken before the court.

The review shall be conducted by the court without a jury, and shall be confined to the administrative and court record. In cases of alleged irregularities in procedure before the appeals board, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

The court shall not substitute its judgment for that of the appeals board as to the weight of evidence on questions of fact. The court may affirm the decision of the appeals board or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, decisions or proceedings were: (a) in violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the director, board, or the appeals board;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, including the additional evidence introduced before the court as above provided;

(f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) Because findings of fact, upon issues essential to the decisions, were not made although requested.

History: En. Sec. 17, Ch. 252, L. 1971.

50-1218. Appeal to supreme court. An aggrieved party may obtain review of a final judgment of a district court under this act by appeal to the supreme court within sixty (60) days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases.

History: En. Sec. 18, Ch. 252, L. 1971.

50-1219. Exemption of works performed prior to promulgation of rules and regulations. No provision of this act shall be applicable to any exploration or mining work performed prior to the date of promulgation

of the director's rules and regulations pursuant to section 4 [50-1204] of this act.

History: En. Sec. 19, Ch. 252, L. 1971.

50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor. No provisions of this act shall apply to any small miner when the small miner agrees in writing, (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed.

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100), payable to the department of revenue of the state of Montana, or any board, commission, or person authorized to collect said fine.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final paragraph.

50-1221. Information obtained from applications confidential—admissible in hearings or proceedings. Any and all information obtained by the board or by the director or his staff by virtue of applications for licenses or permits is confidential between the board and the applicant. Any information obtained by the board or by the director or his staff by virtue of applications for licenses or permits is, however, properly admissible in any hearing conducted by the director, the board, appeals board or in any judicial proceeding to which the director and the applicant are parties. Failure to comply with the secrecy provisions of this act shall be punishable by a fine of up to ten thousand dollars ($10,000) or one (1) year in jail.

History: En. Sec. 21, Ch. 252, L. 1971.

50-1222. Violation a misdemeanor—penalties. Persons violating the provisions of this act shall be guilty of a misdemeanor and may be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six (6) months or by both such penalties.

History: En. Sec. 22, Ch. 252, L. 1971.

50-1223. Exemption of operations on federal lands. This act shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law,

or regulations issued by the federal agency administering such land, impose controls for reclamation of said lands substantially equal to or greater than those imposed by this act.

History: En. Sec. 23, Ch. 252, L. 1971.

50-1224. Exemption of sample collectors. This act shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding one hundred dollars ($100) per year.

History: En. Sec. 24, Ch. 252, L. 1971.

Separability Clause

Section 25 of Ch. 252, Laws 1971 read "The provisions of this act are severable, and if any part or provision thereof shall be held void in decision of the court so holding shall not affect or impair any of the remaining parts of the provisions of this act that are severable from the invalid applications."

Effective Date

Section 26 of Ch. 252, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

CHAPTER 13—NOTICE TO LANDOWNER OF SURFACE OPERATIONS

Section 50-1301. Short title.
50-1302. Prospectors and miners to ascertain ownership of land.
50-1303. Written notice and approval required before commencement of operations.
50-1304. Discovery pits on federal lands exempt.
50-1305. Operations pursuant to prospecting permits or other agreements exempt.
50-1306. Violation a misdemeanor—immunity of landowner.

50-1301. Short title. This act may be referred to as "The Landowner Notification Act."

History: En. Sec. 1, Ch. 335, L. 1971.

Title of Act

An act requiring prospectors, miners, or other persons in this state to advise the owner of the land surface in advance of any operations which will disturb the surface of such land and obtain authorization to operate thereon.

50-1302. Prospectors and miners to ascertain ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance, such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971.

50-1303. Written notice and approval required before commencement of operations. The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land, and the owner of a possessory right to said land, is given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon

such land which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(a) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(b) In the case of city, county, state, or federally owned lands, such person must first obtain the authorization or permit, if any, required by the applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: En. Sec. 3, Ch. 335, L. 1971.

50-1304. Discovery pits on federal lands exempt. Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this act.

History: En. Sec. 4, Ch. 335, L. 1971.

50-1305. Operations pursuant to prospecting permits or other agreements exempt. The provisions of this act shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: En. Sec. 5, Ch. 335, L. 1971; amd. Sec. 1, Ch. 194, L. 1973.

Amendments

The 1973 amendment deleted "or by the owner of one hundred per cent (100%) of the rights to any mineral interest upon the land in which such mineral ownership is vested" from the end of the section.

50-1306. Violation a misdemeanor—immunity of landowner. Any work done in violation of this act is punishable as a misdemeanor and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: En. Sec. 6, Ch. 335, L. 1971.

CHAPTER 14—STRIP MINED COAL CONSERVATION

Section 50-1401. Short title.
50-1402. Policy and purposes of act.
50-1403. Definitions.
50-1404. Approved plan required for strip mining — period for which effective.
50-1405. Review of strip mining plan by department—failure to review—procedures—modification of plan.

50-1406. Appeal on disapproval of plan—hearing—rules to prevent waste of coal.
50-1407. Civil penalty for operation without approved plan—noncompliance with plan—violation of rule as misdemeanor.
50-1408. Procedure for hearings and appeals.
50-1409. Deposition of fines.

50-1401. Short title. This act shall be known and may be cited as "The Strip Mined Coal Conservation Act."

History: En. Sec. 1, Ch. 220, L. 1973.

Title of Act

An act providing for the conservation of strippable and marketable coal, and prohibiting the waste thereof; providing for the submission of strip mining plans, to the department of state lands; assigning duties to the state board of land commissioners; providing penalties; and providing an effective date.

50-1402. Policy and purposes of act. (1) Recognizing the importance of natural resources to the welfare of present and future generations of the people of Montana, it is declared to be the public policy in providing for the orderly development of coal resources through strip mining to assure the wise use and to prevent the waste of coal.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review strip mining plans and either approve or disapprove such plans for the purpose of preventing waste; and

(b) to vest in the board the authority to adopt rules to prohibit waste resulting from strip mining operations.

History: En. Sec. 2, Ch. 220, L. 1973.

50-1403. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the state board of land commissioners.

(2) "Department" means the department of state lands.

(3) "Strip mining" means all or any part of the process followed in the production of coal by the open cut method including mining by the auger method or any similar method which penetrates a coal deposit and removes coal directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the coal.

(4) "Overburden" means all of the earth and other materials which lie above a natural coal deposit and also means such earth and other material after removal from their natural state in the process of strip mining.

(5) "Strippable coal" means that coal which can be removed through strip mining methods adaptable to the location that coal is being strip mined or is planned to be strip mined.

(6) "Marketable coal" means strippable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(7) "Waste" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of strippable and marketable coal in accordance with reclamation standards established by the department shall not be considered waste.

(8) "Person" means a person, partnership, corporation, association or other legal entity.

(9) "Operation" means any person engaged in strip mining who removes more than ten thousand (10,000) cubic yards of coal or overburden.

(10) "Operator" means a person that conducts an operation.

(11) "Strip mining plan" means the planned course of conduct of a strip mining operation to include plans for the removal and utilization of strippable and marketable coal located within the area planned to be mined.

History: En. Sec. 3, Ch. 220, L. 1973.

50-1404. Approved plan required for strip mining—period for which effective. (1) No operator may engage in strip mining without having first obtained approval of a strip mining plan from the department as provided for in section 5 [50-1405].

(2) Approved strip mining plans shall be effective for two (2) years from the date of commencing the operation or one (1) year from the date the plan is approved, whichever occurs first.

History: En. Sec. 4, Ch. 220, L. 1973.

Effective Date
This section becomes effective March 8, 1974. See Effective Date note following sec. 50-1409.

50-1405. Review of strip mining plan by department—failure to review—procedures—modification of plan. (1) Upon submission of a strip mining plan to the department, the department shall review the plan for the purpose of determining whether waste will occur. The department may require an operator to submit any information it deems necessary for review of the strip mining plan to determine whether waste will occur and may make inspections and investigations it deems necessary for the review. The department shall either approve or disapprove a strip mining plan within six (6) months of its receipt from the operator. In the event a strip mining plan is disapproved, the department shall recommend the means to bring the plan into conformance with this act. Any strip mining plan not approved or disapproved by the department within six (6) months of its receipt will be deemed approved for the purposes of this act.

(2) The department shall adopt procedures for the submission of strip mining plans and prescribe the format for the preparation of strip mining plans.

(3) Upon request by the operator for good cause shown, the department may modify the terms and conditions of an approved strip mining plan at any time during the course of an operation.

History: En. Sec. 5, Ch. 220, L. 1973.

50-1406. Appeal on disapproval of plan—hearing—rules to prevent waste of coal. (1) If a strip mining plan is disapproved, the operator or his authorized representative may appeal to the board. Within thirty (30) days of receiving a request for a hearing, the board must hold a hearing. For good cause shown, the hearing may be held not more than sixty (60) days after receipt by the board of the request. The decision of the department with regard to the strip mining plan shall remain in effect not more than five (5) working days after the hearing unless the decision is sooner affirmed, modified or revoked by the board. The board may require an operator to submit any information it deems necessary for the hearing and may make inspections and investigations it deems necessary for the hearing.

(2) The board may adopt rules to prevent the waste of coal resulting from strip mining operations and to otherwise effectuate the purposes and intent of this act.

History: En. Sec. 6, Ch. 220, L. 1973.

50-1407. Civil penalty for operation without approved plan—noncompliance with plan—violation of rule as misdemeanor. (1) Any operator who engages in an operation without an approved strip mining plan as provided for in this act shall be liable to a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), and an additional civil penalty of not less than one hundred dollars ($100) nor more than one thousand ($1,000) for each day during which the violation continues. Such penalties shall be recoverable in an action brought in the name of the state by the attorney general in the district of the first judicial district of the state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) Any operator that fails to comply with the terms of an approved strip mining plan shall be liable to a civil penalty of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000). Upon conviction the court may revoke the strip mining plan. In the event of revocation of the strip mining plan, the operator must proceed as provided for in section 5 [50-1405]. The penalties provided for in subsection (1) of this section shall apply to revoked strip mining plans.

(3) Any person or operator who violates a rule adopted by the board pursuant to this act is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 220, L. 1973.

50-1408. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

History: En. Sec. 8, Ch. 220, L. 1973.

Separability Clause

Section 9 of Ch. 220, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

50-1409. Deposition of fines. All fines collected under the provisions of this act shall be deposited in the general fund.

History: En. Sec. 10, Ch. 220, L. 1973.

Effective Date

Section 11 of Ch. 220, Laws 1973 read "This act is effective on its passage and approval except that for operations in effect upon the date of the passage and approval of this act, the provisions of section 4 shall not apply to such operations for one (1) year from the effective date of this act."

CHAPTER 15—OPEN CUT MINING

Section 50-1501. Short title.
50-1502. Policy of state.
50-1503. Contracts for reclamation of open cut mining land—enforcement of contracts.
50-1504. Definitions.
50-1505. Administration of act—delegation of functions.
50-1506. Powers, duties and functions of commission.
50-1507. Contract for reclamation required for large open cut operations.
50-1508. Application for contract—contents—issuance of contract—amendment—withdrawal of land.
50-1509. Terms of bond required—deposit in lieu of bond—substitution of bond—forfeiture—release.
50-1510. Contract requirements—performance bond—effective period of contract.
50-1511. Receipt of funds by commission—reclamation work by commission.
50-1512. Inspection of open cut mining by commission.
50-1513. Operation without contract as misdemeanor—penalty.
50-1514. Reclamation of land on which bond forfeited.
50-1515. Commission hearing on final order of commissioner—judicial review.
50-1516. Exemption of operations covered by other law.

50-1501. Short title. This act shall be known and may be cited as "The Open Cut Mining Act."

History: En. Sec. 1, Ch. 326, L. 1973.

Title of Act

An act to provide for reclamation and conservation of land subject to open cut bentonite, sand or gravel mining; requiring reclamation contracts for operations resulting in removal of ten thousand (10,000) cubic yards of overburden or product; providing enforcement by the state board of land commissioners; repealing sections 50-1018 through 50-1033, R. C. M. 1947; and providing an effective date.

50-1502. Policy of state. It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973.

50-1503. Contracts for reclamation of open cut mining land—enforcement of contracts. The state board of land commissioners is hereby

authorized to enter into contracts in the name of the state of Montana with operators which will provide for the reclamation of lands on which open cut mining of bentonite, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 3, Ch. 326, L. 1973.

50-1504. Definitions. When used in this act, unless a different meaning clearly appears from the context:

(1) "Contract" means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, sand or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, sand or gravel. "Spoil' is the overburden disturbed from its natural state in the process of open cut mining.

(5) "Operator" means any person engaged in and controlling an open cut mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Commission" means the state board of land commissioners.

(8) "Person" means any natural person, or any firm, association, partnership, co-operative, corporation or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(9) "Landowner" means the owner of land directly or indirectly affected by an open cut mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the open cut mining operations.

(13) "Final cut" means the last pit created in an open cut mined area.

(14) "High wall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by open cut mining during the year. Such report shall show the number of acres of affected land and all reclamation accomplished.

History: En. Sec. 4, Ch. 326, L. 1973.

50-1505. Administration of act—delegation of functions. The commission is the administrator of this act and it has all the power necessary to implement and enforce it. The commission may delegate to the commissioner of state lands such powers, duties and functions under this act as it deems necessary for the performance of its duties.

History: En. Sec. 5, Ch. 326, L. 1973.

50-1506. Powers, duties and functions of commission. The commission has the following powers, duties and functions:

(1) to enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the commission that the requirements of the act or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistent with the purpose of the act;

(2) to prepare and adopt rules and regulations pertaining to open cut mining to accomplish the purposes of this act;

(3) to conduct hearings and for the purposes of conducting such hearings, to administer oaths and affirmations, to subpoena witnesses, to compel attendance of witnesses, to hear evidence and to require the production of any books, papers, correspondence, memoranda, agreements, documents or other records relevant or material to the inquiry;

(4) to adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this act;

(5) to reclaim any affected land with respect to which a bond has been forfeited;

(6) to make investigations or inspections which may be deemed necessary to ensure compliance with any provisions of this act.

History: En. Sec. 6, Ch. 326, L. 1973.

50-1507. Contract for reclamation required for large open cut operations. From and after the effective date of this act, no operator shall conduct open cut mining operations which shall result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden, until he has entered into a contract with the commission for the reclama-

tion of the land affected. Any operator conducting a number of operations each of which result in the removal of less than ten thousand (10,000) cubic yards of product or overburden but which result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden in the aggregate shall be subject to the provisions of this act.

History: En. Sec. 7, Ch. 326, L. 1973.

50-1508. Application for contract—contents—issuance of contract—amendment—withdrawal of land. Applications for a contract shall be made upon a form furnished by the commission, which form contains the following:

(1) the name of the operator and, if other than the owner of the land, the name and address of the owner.

(2) the type of operation to be conducted;

(3) the volume of earth to be removed, as accurately as the same may then be estimated, and the volume which has been previously removed, if any;

(4) the location of the operation by legal subdivision, section, township and range, and county;

(5) the date when such operation was or will be commenced;

(6) the operator must submit a plan of his operation and the method and manner of reclamation that will be used or followed. If the operator, prior to applying for a contract, notifies the commission of his intention to submit a plan, and requests the commission to examine the area to be mined, the commission shall cause the area to be examined and make recommendations to the operator regarding reclamation;

(7) a statement that the applicant has the right and power by legal estate owned to mine by open cut mining the lands so described;

(8) the application shall be accompanied by:

(a) a bond or security meeting the requirements as set out in this act, and

(b) a fee of fifty dollars ($50);

Upon receipt of such application, bond or security and fee due from the operator, and upon agreement to the terms of the contract by the parties, the commission may issue a contract to the applicant which shall entitle him thereafter to continue in or engage in open cut mining or land therein described;

(9) an operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the commission. Upon receipt of the amended application, and such additional bond as may be required, and upon agreement to the terms of the amendment by the parties, the commission may issue an amendment to the original contract covering the additional land described in the amended application, without the payment of any additional fee;

(10) an operator may withdraw any land covered by contract, except affected land, by notifying the commission thereof, in which case the

penalty of the bond or security filed by such operator pursuant to the provisions of this act shall be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973.

50-1509. Terms of bond required—deposit in lieu of bond—substitution of bond—forfeiture—release. (1) Any bond required to be filed in this act by the operator shall be in such form as the commission prescribes, payable to the state of Montana, and conditioned upon the operator's full compliance with all requirements of this act and all rules and regulations of the commission. Such bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety, licensed to do business in the state of Montana, as surety. The penalty of such bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the commission, but shall not be less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) per acre.

(2) In lieu of such bond, the operator may deposit cash and government securities or a bond with property sureties with the commission in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the commission, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety shall be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. Such bond or security shall be and remain in effect until the mined acreages have been reclaimed, as provided under the contract, and approved and released by the commission, and shall from time to time cover only actual mined acreages and may be increased or reduced to cover only such acreages as remained unreclaimed.

(3) If the license to do business in the state of any surety upon a bond filed with the commission pursuant to this act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the commission shall have the right to suspend the contract of the operator to conduct operations upon the land described in such contract until such substitution has been made.

(4) The commission shall cause to be reclaimed any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator shall have completed all of the requirements under the provisions of this act as to any affected land, he shall notify the commission thereof. If the commission shall release the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973.

50-1510. Contract requirements—performance bond—effective period of contract. The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the commission before commencing any open cut mining, and may not commence mining before it receives approval from the commission. The operator may request and receive a meeting with the commission prior to submission of the plan. If the commission does not notify the operator that it has approved or disapproved a plan within thirty (30) days after the commission has received the plan, the commission shall be deemed to have approved the plan. The commission, however, may for sufficient cause extend its period of consideration for an additional thirty (30) days if it notifies the operator prior to the end of the original thirty (30) day period. The commission shall submit all reclamation plans or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The commission may seek technical help from any state or federal agency. The commission must submit the plan immediately to the director, university of Montana state-wide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The commission may approve a reclamation plan only if the commission has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land shall be reclaimed to a productive use. Once the reclamation plan has been accepted in writing by the commission, it shall become a part of the contract but shall be subject to annual review and modification by the commission.

(2) The commission may not approve any reclamation plan unless the plan provides that:

(a) the land will be reclaimed for one or more specified uses, including but not limited to: forest, pasture, orchard, cropland, residence, recreation, industry, habitat (including food, cover or water) for wildlife or other uses;

(b) to the extent reasonable and practicable, the operator shall establish vegetative cover commensurate with the proposed land use;

(c) where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas if required by the reclamation plan after completion or termination of that particular phase of the mining operations at a depth sufficient for plant growth on slopes of 3:1 or less. Grading specifications shall be commensurate with the topography sought and land use designated;

(e) metal and other waste shall be removed or buried;

(f) all access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion;

(g) the operator shall submit annually to the commission a progress report;

(h) all operations shall be conducted so as to avoid range and forest fires and spontaneous combustion. Open burning of carbonaceous materials shall be in accordance with suitable practices for fire prevention and control;

(i) archaeological and historical values in areas to be mined shall be given appropriate protection;

(j) except for rock faces, bench faces and excavations used for water impoundments, each surface area of the mined premises which will be disturbed shall be revegetated when its use for extractive purposes is no longer required. Seeding and planting shall be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock and retardation of erosion. All seed will be drilled unless otherwise provided in the plan;

(k) reclamation shall be as concurrent with mining operations as feasible, and must be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the commission shall after thirty (30) days' written notice order the operator to cease mining, and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the commission a new reclamation plan or amendment to the existing plan including extensions of time.

(b) The commission may approve the proposed new reclamation plan, or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan, and

(ii) the proposed new plan, or amendments to the existing plan, will result in reclamation as desirable or more so than the reclamation proposed under the existing plan, or

(iii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan becomes a part of the contract.

(5) The operator shall provide a performance bond, or an alternative acceptable to the commission, in an amount commensurate with the estimated cost of reclamation, but in no case shall the bond be less than two hundred dollars ($200) per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan and amendments accepted by the commission shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the com-

mission and the operator, and shall remain in force until terminated by mutual consent or by the commission upon six (6) months' notice.

History: En. Sec. 10, Ch. 326, L. 1973.

50-1511. Receipt of funds by commission — reclamation work by commission. The commission may receive any federal funds, state funds or any other funds for the reclamation of land affected by open cut mining. The commission may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts or through contracts with qualified persons.

Any funds or any public works programs available to the commission shall be used and expended to reclaim and rehabilitate any lands that have been subject to open cut mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 11, Ch. 326, L. 1973.

50-1512. Inspection of open cut mining by commission. The commission, or its accredited representatives, may enter upon lands subjected to open cut mining at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973.

50-1513. Operation without contract as misdemeanor—penalty. Anyone required by this act to have a contract and who engages in open cut mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000). Each day of operation without a contract required by this act shall be deemed a separate violation.

History: En. Sec. 13, Ch. 326, L. 1973.

50-1514. Reclamation of land on which bond forfeited. The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973.

50-1515. Commission hearing on final order of commissioner—judicial review. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the commission.

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) governs hearings before the commission and judicial review of decisions of the commission under this act.

History: En. Sec. 15, Ch. 326, L. 1973.

Separability Clause

Section 16 of Ch. 326, Laws 1973 read "The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this act that are severable from the invalid applications."

Repealing Clause

Section 17 of Ch. 326, Laws 1973 read "Sections 50-1018 through 50-1033, R. C. M. 1947, are repealed. However, contracts entered into under the provisions of sections 50-1018 through 50-1033, R. C. M. 1947, are not affected hereby, and shall remain in effect until terminated or completed."

50-1516. Exemption of operations covered by other law. Nothing in this act shall be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, chapter 12, R. C. M. 1947.

History: En. Sec. 18, Ch. 326, L. 1973.

Effective Date

Section 19 of Ch. 326, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

TITLE 51—MONOPOLIES

Chapter 1. Unfair Practices Act, 51-113.
3. Montana Cigarette Sales Act, 51-301 to 51-314.
4. Unfair competition, discrimination and combinations in restraint of trade, 51-405, 51-409.

CHAPTER 1—UNFAIR PRACTICES ACT

Section 51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order.

51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order. (1) The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law. The commission shall meet not less than six (6) times a year on or about the fifteenth (15th) day of the month, and as often and wherever it may decide other meetings are necessary. Suitable notice of all meetings shall be given as the commission may determine.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice from any person that any person, firm or corporation is violating or has violated any of the provisions of this chapter, the commission shall immediately notify the person giving such notice either to appear at its next regular or special meeting or to make a written reply to show probable cause of such violation. If probable cause is shown, the commission must thereafter make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

If, after such investigation the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time five (5) days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person,

firm or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(3) to (10). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967.

Amendments

The 1967 amendment inserted the second sentence in the first paragraph of subsection (1); inserted the first paragraph in subsection (2); substituted "If, after such investigation" for "Whenever" at the beginning of the second paragraph in subsection (2); and inserted arabic numbers after the written numbers in subsections (2), (4), (7) and (8).

Cross-References

Commission abolished and functions transferred, sec. 82A-404.

CHAPTER 3—MONTANA CIGARETTE SALES ACT

Section 51-301. Declaration of policy.
51-302. Short title.
51-303. Definitions.
51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.
51-305. Sales from wholesaler to wholesaler.
51-306. Combination sales.
51-307. Exceptions.
51-308. Sales to meet competition.
51-309. Contracts in violation void.
51-310. Evidence to be considered as bearing on bona fides of cost.
51-311. Cigarettes purchased outside ordinary trade channels.
51-312. Cost survey.
51-313. Civil suits for violation of act.
51-314. Powers of board.

51-301. Declaration of policy. It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965.

Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes

below cost; to protect and stabilize the collection of taxes on the sale of cigarettes and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

51-302. Short title. This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

History: En. Sec. 1, Ch. 258, L. 1965.

51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning or the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the

usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the department of proof which the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum (¾ of 1%) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concession no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however. that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and

usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10%) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10%) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973.

Amendments

The 1967 amendment in subparagraph (10)(a) substituted "by the standards and methods * * * shall include within said costs" for "accounting, which shall include allocation of overhead costs and expenses, paid or incurred, and must include" after "as evidenced by" and added the last sentence; in subparagraph (11)(a) substituted "the said retailer * * * shall include within said costs" for "him in his allocation of overhead costs and expenses, paid or incurred, and must include" after "employed by," inserted "costs" after "labor," inserted "business" before "taxes," inserted "including any rebates * * * the 'basic costs of cigarettes'" after "advertising," inserted "however" after "provided," substituted "purchases from the manufacturer * * * wholesale quantities" for "in connection with the retailer's purchases by a wholesaler" after "any retailer who," substituted "as determined in" for "as defined in section 2" before "subparagraph (10)(b)," and added "(b)" after "subparagraph (10)."

The 1973 amendment substituted "'department'" for "'board'" and "department of revenue" for "board of equalization" in subdivision (4); and substituted "department" for "board" in subdivisions (10)(b) and (11)(b) and (c).

Cost to Wholesaler

Board of equalization formula requiring cigarette wholesaler to reduce wholesale price by tax discount provided for under section 84-5606.12 was improper because full face value of the tax insignia was to be used in determining wholesale price. Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization, 156 M 108, 476 P 2d 775.

51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent. It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or con-

cession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars ($500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

51-305. Sales from wholesaler to wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

51-306. Combination sales. In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

History: En. Sec. 5, Ch. 258, L. 1965.

51-307. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are sold upon the final liquidation of a business; or (d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965.

51-308. Sales to meet competition. (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965.

51-309. **Contracts in violation void.** Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965.

51-310. **Evidence to be considered as bearing on bona fides of cost.** (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965.

51-311. **Cigarettes purchased outside ordinary trade channels.** In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965.

51-312. **Cost survey.** Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

History: En. Sec. 11, Ch. 258, L. 1965.

51-313. **Civil suits for violation of act.** (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and

restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

51-314. Powers of board. (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act, the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax

law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965.

Separability Clause

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-References

Cigarette tax, secs. 84-5606 to 84-5606.31.

CHAPTER 4—UNFAIR COMPETITION, DISCRIMINATION AND COMBINATIONS IN RESTRAINT OF TRADE

Section 51-401 to 51-404. [Transferred from Title 94.]
51-405. Penalty for violation of law.
51-406 to 51-408. [Transferred from Title 94.]
51-409. Penalty for violation of law.
51-410 to 51-414. [Transferred from Title 94.]

51-401 to 51-404. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1104, 94-1105, 94-1107, and 94-1108. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
51-401	94-1104
51-402	94-1105
51-403	94-1107
51-404	94-1108

51-405. (10906) **Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section 51-403, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars ($200) nor more than ten thousand dollars ($10,000) for each offense.

History: En. Sec. 3, Ch. 8, L. 1913; amd. Sec. 3, Ch. 80, L. 1917; re-en. Sec. 10906, R. C. M. 1921; Sec. 94-1109, R. C. M. 1947; redes. 51-405 and amd. by Sec. 23, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-1109 in bound Volume Eight.

Amendments

The 1973 amendment renumbered this section; substituted the reference to section 51-403 for a reference to section 94-1107; and made a minor change in style.

51-406 to 51-408. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1110 to 94-1112. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are

not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
51-406	94-1110
51-407	94-1111
51-408	94-1112

51-409. (10910) **Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section 51-407, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars ($200) nor more than ten thousand dollars ($10,000) for each offense.

History: En. Sec. 3, Ch. 7, L. 1913; re-en. Sec. 10910, R. C. M. 1921; Sec. 94-1113, R. C. M. 1947; redes. 51-409 and amd. by Sec. 24, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-1113 in bound Volume Eight.

Amendments

The 1973 amendment renumbered this section; substituted the reference to section 51-407 for a reference to section 94-1111; and made a minor change in style.

51-410 to 51-414. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1114 to 94-1118. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
51-410	94-1114
51-411	94-1115
51-412	94-1116
51-413	94-1117
51-414	94-1118

TITLE 52—MORTGAGES

Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small tract financing act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.
52-313. Sales—commencement and postponement.
52-314. Report of sales, and filing thereof.
52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.
52-320. Contents of notices.
52-321. Duty of secured parties to file satisfactions of security agreements.
52-322. Fees—disposal of.
52-323. Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949; Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

Deficiency Judgment after Foreclosure Sale

Deficiency judgment after foreclosure sale was proper even though sale was not public and contract contained clause that "notice [be] given in the manner provided in Section 52-312," since mortgagee was given power of sale by contract, with contract setting forth statute as an acceptable method of sale. Bell v. Cole, 154 M 43, 459 P 2d 692.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

Notice of Sale

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location of the sale, mortgagee had failed to fulfill the strict statutory requirements in enforcing the lien and the sale was void. Goggins v. Bookout, 141 M 449, 378 P 2d 212, distinguished in Bell v. Cole, 154 M 43, 459 P 2d 692.

52-314. (8288) **Report of sales, and filing thereof.** Within ten days after the sale of any property subject to a security interest, as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) **Repealed.**

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-319. (3308.1) **Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.** The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of security agreements, renewals, assignments and satisfactions thereof covering livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the secured party, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any secured party for

the proceeds of livestock sold through such livestock market by the debtor unless notice of such security agreement is filed as hereinbefore provided. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

52-320. (3308.2) **Contents of notices.** Such notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, and/or holders and owners thereof, a description of the livestock covered by said security agreement, and in case of notice of renewal, the notice shall state the date of renewal thereof and in the case of a notice of assignment of a security interest, such notice shall state the date of such assignment, and a description of the security agreement as to which such assignment is made and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" and made numerous other changes in the required contents of the notices. For previous text, see parent volume.

52-321. (3308.3) **Duty of secured parties to file satisfactions of security agreements.** It shall be the duty of the secured parties, who filed notices of security agreements, renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such security agreements with the general recorder of marks and brands immediately upon the satisfaction of said security agreement. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "secured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mortgage."

52-322. (3308.4) **Fees—disposal of.** The general recorder of marks and brands shall charge for filing and listing such notices of security agreements the sum of two dollars ($2) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction or renewal or assignment of such security agreement, the sum of two dollars ($2) for each recorded brand listed therein. All fees so charged shall be paid into the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

The 1969 amendment increased the filing and listing fees from "one dollar" to "two dollars."

52-323. (3308.5) Brand recorder or livestock commission not responsible for collection or payment of money under security agreements. Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor or secured party" for "mortgagor or mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices of chattel mortgage" which preceded "or renewals."

CHAPTER 4—SMALL TRACT FINANCING ACT

Section 52-401. Short title.
52-402. Declaration of policy.
52-403. Definitions.
52-404. Authorization of trust indentures.
52-405. Qualifications of trustee.
52-406. Reconveyance upon performance—liability for failure to reconvey.
52-407. Time within which foreclosure must be commenced.
52-408. Foreclosure by advertisement and sale.
52-409. Notice of sale to be mailed, posted and published.
52-410. Trustee's deed.
52-411. Possession.
52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
52-413. Disposition of proceeds of sale.
52-414. Deficiency judgment not allowed.
52-415. Requests for copies of notice of sale.
52-416. Trustee's fees and attorney's fees.
52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963.

Constitutionality

This act is not unconstitutional on grounds that it is special legislation favoring rural landowners, that its withdrawal of redemption rights and its notice provisions violate due process, or that it provides for statutory power of sale to be read into all agreements using trust indentures even where agreement between parties does not so provide. Great Falls Nat. Bank v. McCormick, 152 M 319, 448 P 2d 991.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The

power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963.

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request.

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie

evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand

refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title

to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed $150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963.

Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

TITLE 53—MOTOR VEHICLES

Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-106, 53-106.1, 53-106.6 to 53-110, 53-112 to 53-115, 53-117, 53-118, 53-118.6 to 53-120, 53-122, 53-129, 53-133, 53-136, 53-139, 53-139.1, 53-145 to 53-153.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418, 53-420 to 53-422, 53-431, 53-432, 53-438.
5. State-owned or leased motor vehicles, 53-514 to 53-521.
6. Additional fees or taxes on motor vehicles, 53-626, 53-638.1, 53-642, 53-644 to 53-647.
7. Reciprocity and proportional registration, 53-701 to 53-724.
8. Markings on trucks and heavy vehicles, 53-801 to 53-803.
9. Removal and sale of abandoned vehicles, 53-901 to 53-909.
10. Snowmobiles, 53-1012 to 53-1025.1, 53-1026 to 53-1029.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES—DUTIES OF REGISTRAR

Section 53-101. Duties of registrar of motor vehicles—records.
53-102. Penalty for violations—enforcement of provisions.
53-106. Number plates.
53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.
53-106.7. Distinctive plates for national guardsmen.
53-106.8. Free license plates to disabled veterans.
53-106.9. Nontransferability of disabled veterans' free license plates.
53-106.10. Veterans' free plates limited to one automobile.
53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties.
53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.
53-108. Renewal of registration.
53-109. Transfer of title or interest.
53-109.1. Used motor vehicles—transfer to and from dealers.
53-109.2. Applicability of sticker provisions to new car purchases.
53-109.3. Temporary windshield sticker.
53-109.4. Grace period—penalty.
53-110. Filing of liens, rights, procedure, fees.
53-112. Fee for original certificate of ownership and transfer of title.
53-113. Lost certificates.
53-114. Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
53-115. Time for making application.
53-117. Disposition of taxes.
53-118. Application for dealer's license.
53-118.6. Demonstration of trucks and trailers authorized—dealer's plate to be used.
53-118.7. Application for truck demonstration permit—form and contents—number of permits authorized.
53-118.8. Operation under truck demonstration permit—period of permit—rental under permit prohibited.
53-118.9. Violation of truck demonstration provisions.
53-118.10. Disposition of truck demonstration fees.
53-119. Must have license plates.
53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.

53-120. Replacing number plates.
53-122. Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees —license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.
53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.
53-133. Definitions.
53-136. Alteration or forgery of certificate of title or assignment thereof and penalty therefor.
53-139. Penalty for sale of vehicle with engine number altered or changed—application for special number.
53-139.1. Penalty for altering identification number.
53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates.
53-146. Transfer of license plates to another motor vehicle.
53-147. New registration required for transferred vehicle.
53-148. Personalized license plates authorized.
53-149. Color and design of personalized plates.
53-150. Definition of personalized license plates.
53-151. Personalized license plates restricted to registered owner.
53-152. Application for personalized plates—duplication—good taste.
53-153. Fees for personalized plates—disposition.

53-101. (1755) **Duties of registrar of motor vehicles—records.** 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient. Vehicle registration records and indexes, and driver's license records and indexes, may be maintained by electronic recording and storage media.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of unneeded records and files the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all records and files which have ceased to be of any value.

7 and 8. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971.

Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars ($25,000.00), providing for the faithful performance of his duty"; and substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

The 1967 amendment deleted "of motor and accessories dealers and of operators and chauffeurs" after "semitrailers"; inserted "and" before "of all dealers"; and deleted "and automobile accessories and of operators and chauffeurs" after "in motor vehicles" in subsection 1.

Chapter 115, Laws of 1969, substituted "shall be microfilmed and the original destroyed when" for "after the expiration of five (5) years after the date" in subsection (6).

Chapter 207, Laws of 1969, added the second sentence to subsection (3) (d).

The 1971 amendment substituted "unneeded records and files" for "records and files which shall have ceased to be of any value" in the second sentence of subsection 6; and substituted "records and files which have ceased to be of any value" at the end of the subsection 6 for "all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto shall be microfilmed and the original destroyed when the same have ceased to be liens on the motor vehicles described therein."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Registrar's position abolished and functions transferred, sec. 82A-1205(1).

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-102. (1755.1) **Penalty for violations—enforcement of provisions.** The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars ($25.00). Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

History: En. Sec. 2, Ch. 158, L. 1931; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965.

Amendment

The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

53-106. (1757) **Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued every other year, provided that number plates will next be issued in the year 1973 and in alternate years thereafter, shall bear a distinctive marking, and shall be furnished by the state. In alternate years the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked

revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison,

25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971.

Amendments

The 1965 amendment substituted the second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

The 1967 amendment substituted "issued every other year" for "renewed annually," and deleted "each year" after "marking" in the third sentence of subsection (1); added the fourth sentence of subsection (1); deleted "and the required serial numbers and letters thereon" after "registration plate" and "or numerals and border" after "material" in the second sentence of subsection (2); substituted "motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar" for "general fund of the state of Montana" in the third sentence of subsection (2); and added "and housetrailers" after "trailers" at the end of the first sentence of subsection (4).

The 1969 amendment added the second paragraph in subsection (4).

The 1971 amendment inserted in the second sentence of subsection (1) the provision for distinctive letters for plates issued to dealers in vehicles of the motorcycle type; inserted "provided that number plates will next be issued in the year 1973 and in alternate years thereafter" in the third sentence of subsection (1); added at the end of the first paragraph of subsection (4) the provision for distinctive letters for plates assigned to vehicles of the motorcycle type; inserted references to vehicles of the motorcycle type in two places in the second paragraph of subsection (4); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 41, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1967.

Cross-References

Warden to continue to provide license plates, sec. 82A-1205(1).

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured in 1933 or earlier or manufactured in 1934 or later and is more than thirty (30) years old, used solely as a collectors' item and not for general transportation purposes, may file with the registrar of motor vehicles an application for the registration

of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars ($5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars ($10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant:

(1) for motor vehicles manufactured in 1933 or earlier, two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number; or

(2) for motor vehicles manufactured in 1934 or later and more than thirty (30) years old, two (2) license plates bearing the inscription, "Vintage—Montana" and the registration number. The year of issuance shall not be shown on the plates. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963; amd. Sec. 1, Ch. 422, L. 1973.

Amendments

The 1963 amendment substituted "thirty (30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

The 1973 amendment substituted "manufactured in 1933 or earlier" in the first sentence of the first paragraph for "manufactured more than thirty (30) years prior to the year 1963"; inserted "or manufactured in 1934 or later and is more than thirty (30) years old" in the first sentence of the first paragraph; inserted "used" before "solely as a collectors' item" in the first sentence of the first paragraph; divided the first sentence of the second paragraph into the preliminary sentence, clause (1) and the sentence following clause (2); inserted "for motor vehicles manufactured in 1933 or earlier" at the beginning of clause (1); inserted clause (2) in the second paragraph; and made minor changes in style.

53-106.6. Special plates—how affixed to car—sale or transfer of auto —revocation or expiration of radio license. The lettered license plates, as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or expires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the

motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the registrar. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the registrar of motor vehicles.

History: En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969.

Amendments

The 1969 amendment deleted a requirement that "the regular number plates shall be mounted on the motor vehicle" upon the transfer or sale of a motor vehicle.

53-106.7. Distinctive plates for national guardsmen. In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters "NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every five (5) years or when lost, destroyed or damaged.

History: En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967.

Title of Act

An act to provide for distinctive license plates for motor vehicles owned by active members of the Montana national guard.

Amendments

The 1967 amendment substituted "every five (5) years or when lost, destroyed or damaged" for "concurrently with the issuance of the regular motor vehicle license plates" at the end of this section.

53-106.8. Free license plates to disabled veterans. Any person who is a veteran of the armed service of the United States and permanently and totally disabled because of an injury which has been determined by the veterans administration to be service connected, and who is a citizen and resident of the state of Montana, and who is the owner of an automobile, shall be provided with free license plates upon payment of personal property tax equal to one per cent (1%) of the taxable value for the automobile upon proof of permanent and total service connected disability.

History: En. Sec. 1, Ch. 215, L. 1971.

Title of Act

An act to provide free license plates to permanently and totally disabled veterans of the armed forces of the United States whose disability is service connected.

53-106.9. Nontransferability of disabled veterans' free license plates. The license issued pursuant to this act shall not be transferable.

History: En. Sec. 2, Ch. 215, L. 1971.

53-106.10. Veterans' free plates limited to one automobile. No disabled veteran shall be entitled to free license plates for more than one automobile.

History: En. Sec. 3, Ch. 215, L. 1971.

53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties. Any person who violates this act or who knowingly and wrongfully attempts to secure free license plates under this act shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars ($100) or imprisonment for not more than thirty (30) days or both.

History: En. Sec. 4, Ch. 215, L. 1971.

53-107. (1758) Certificates of registration and ownership — contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand. Upon completion of the application for registration, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "File copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership subject to the provisions of section 53-110. Said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

File copy of owner's certificate of registration receipt to be signed, carried, and exhibited on demand. Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

The term "motor vehicle" includes automobile, truck, motorcycle-type vehicle, and semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof by affidavit, of such stamping is filed with him.

Any person violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars ($25.00).

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971.

Amendments

The 1969 amendment deleted exceptions relating to the owners of passenger cars, pickups and farm trucks in the fifth paragraph of the section.

The 1971 amendment deleted "in quintuplet" after "application for registration" near the beginning of the section; substituted "subject to the provisions of section 53-110" at the end of the first sentence of the first paragraph for "and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the possession or under the control of any person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or any other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien"; deleted "The reverse side of" at the beginning of the fourth paragraph; substituted "motorcycle-type vehicle" for "motorcycle" in the sixth paragraph; and made minor changes in style.

Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-108. (1758.1) Renewal of registration. Every vehicle registration under this act shall expire on December thirty-first of each year and

shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicles between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 138 and once by Ch. 214. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendatory acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both.

Amendments

The 1965 amendment increased the fee for temporary windshield stickers provided for by the former third paragraph from $1.00 to $2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same paragraph.

Chapter 116, Laws of 1969, deleted language restricting the application of the former third paragraph to purchasers from licensed dealers; and extended the life of the temporary windshield stickers from 30 days to 60 days.

Chapter 127, Laws of 1969, deleted from the former third paragraph language requiring display of the previous year's number plates with the temporary windshield sticker; extended the grace period for application for registration from three days to ten days; and made the grace period applicable to used as well as new vehicles.

Chapter 138, Laws of 1971, deleted the former third paragraph providing for temporary windshield stickers.

Chapter 214, Laws of 1971, deleted from the first paragraph a final sentence reading "Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year"; and made minor changes in punctuation and style.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 241 M 155, 382 P 2d 174.

53-109. (1758.2) Transfer of title or interest. (a) * * * [Same as parent volume.]

(b) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under section 53-107, to the county treasurer, who shall forward the same to the registrar and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. Failure to make such application within the time provided herein shall subject the transferee to a penalty of ten dollars ($10) plus one dollar ($1) for each additional day in which said vehicle remains unregis-

tered, not to exceed twenty-five dollars ($25), said penalty to be collected by the county treasurer at the time of registration, and in addition to the fees otherwise provided by law.

(c) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

In the event of the death of an owner of one or more motor vehicles and/or trailer, and/or semitrailer, and/or trailer-house registered hereunder and not exceeding the value of four thousand dollars ($4,000), without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact

of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions of this act to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(d) Every person who transfers any motor vehicle to a junk dealer for the purpose of scrapping said vehicle shall so notify the registrar and deliver the certificate of ownership and certificate of registration to the registrar for cancellation.

History: En. Subd. 3, Sec. 2, Ch. 159, L. 1933; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 138, L. 1971.

Amendments

The 1967 amendment deleted "registered under the provisions of this act" after "motor vehicle" near the beginning of the first paragraph of former subsection (e), now subsection (c); and inserted the present second paragraph in former subsection (e), now subsection (c).

The 1969 amendment increased the maximum value specified in the third paragraph of former subsection (e), now subsection (c), from $1,000 to $4,000.

The 1971 amendment substituted "county treasurer, who shall forward the same to the registrar" in the first sentence of subsection (b) for "registrar, who shall file the same upon receipt thereof"; added the second sentence to subsection (b); deleted former subsections (c) and (d); and redesignated former subsections (e) and (f) as (c) and (d), respectively.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

53-109.1. Used motor vehicles—transfer to and from dealers. The provisions of subdivision (b) of section 53-109 shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(1) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the registrar, and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VE-

HICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER." One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2) hereof, and a copy shall be retained by the dealer for his file.

(2) Within three (3) days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides, the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of section 53-107, and a copy of the sticker affixed to said vehicle by the dealer, and the registrar, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in said section 53-107. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(3) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (2) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of said subdivision (2) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within three (3) days after their receipt.

Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration.

History: En. Sec. 3, Ch. 138, L. 1971.

Title of Act

An act to provide for the issuance by licensed motor vehicle dealers of stickers to be affixed to the rear window of new and used vehicles purchased from such dealers, to remain thereon during the ten day grace period for making application for registration of such vehicle; providing a nonregistration penalty; requiring that in cases of sales of used motor vehicles to persons other than licensed dealers, the dealer forward to the county treasurer, either personally or by first class mail, within three days following delivery of the vehicle, the certificate of ownership and certificate of registration with an application for registration executed by the new owner, and a copy of the sticker affixed to said vehicle by the dealer; providing that in such cases and upon compliance by the dealer with such requirements, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of delivery of said vehicle; amending sections 53-108, 53-109, 53-146, and 53-147, Revised Codes of Montana, 1947; and repealing all acts and parts of acts in conflict herewith.

DECISIONS UNDER FORMER LAW

Attachment of Vehicle

Where plaintiff assignee of vehicle had not recorded the title in her name even though she had possession of the vehicle and endorsed documents of title, she was a stranger to the title under former subsection (d) of section 53-109 and had no standing to complain of a wrongful at-

tachment for the debt of the supposed owner, her former husband. Ott v. Fidelity Finance Co., 158 M 91, 488 P 2d 1148.

Contract for Purchase

Where registrar never issued certificate of registration to purchaser of a vehicle, so that under former subsection (d) of section 53-109 title did not pass to the purchaser, a non-negotiable promissory note given by the purchaser was without consideration, therefore voidable against an assignee of the note. Sonnek v. Universal C.I.T. Credit Corp., 140 M 503, 374 P 2d 105, 108.

Insurance Coverage

Where buyer of a vehicle had not executed an application for registration in his name and neither party had filed any documents relating to the transfer with the registrar of motor vehicles, title had not passed to the buyer even though the parties had agreed on the price and buyer had taken possession, so that liability from an accident while buyer was driving was covered by dealer-seller's insurance rather than by the owned-replacement clause of buyer's insurance. Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174, distinguished in 368 F 2d 405, 409 and in 329 F Supp 172, 175.

Where dealer-seller retained possession of the certificate of registration of a vehicle pending payment of the final installments of the purchase price, the title remained in the seller under the provisions of former subsection (d) of section 53-109, even though the vehicle had been delivered to buyer, and liability for an accident involving buyer's son's driving of the car was covered by the seller's insurance rather than by the 30-day automatic coverage for a new car under buyer's policy or by uninsured motorist coverage of injured parties. Ostermiller v. Parker, 152 M 337, 451 P 2d 515, explained in 323 F Supp 1164, 1173 and distinguished in 329 F Supp 172, 175.

Where none of the parties had taken any steps to have a new certificate of title issued to buyer of a vehicle, title remained in the dealer-seller under former subsection (d) of section 53-109, even though the vehicle and the executed documents of title had been delivered to the buyer by a third party non-dealer who had purchased from the dealer, and liability for an accident arising out of the buyer's brother's operation of the vehicle was covered by the insurance of the dealer and the third party, rather than by the insurance of the buyer. Irion v. Glen Falls Ins. Co., 154 M 156, 461 P 2d 199, explained in 323 F Supp 1164, 1174 and distinguished in 329 F Supp 172, 175.

Where purchaser of vehicle had exercised complete dominion over a vehicle for over three years, had taken possession of the seller's certificate of registration, had purchased license plates for it in his own name for two years, had purchased insurance for it, and had repaired it, he was the owner of the vehicle for purposes of the non-owned clause of his insurance policy, despite the fact that there had been no compliance with section 53-109 and no certificate of registration had been issued to him as required by former subsection (d) of section 53-109. National Farmers Union Property & Casualty Co. v. Colbrese, 368 F 2d 405, reversing 227 F Supp 978, cert. den. 386 US 991, 87 S Ct 1306, questioned in 154 M 156, 461 P 2d 199, 205.

Where certificate of title had not been endorsed by dealer-seller and there had been no application for a certificate in buyer's name, the failure to meet the requirements of section 53-109 invalidated the sale under the terms of former subsection (d) of section 53-109, the seller was still legally in possession, and buyer was not excluded by an exclusion of persons to whom possession had been delivered pursuant to a contract of sale, despite the fact that the vehicle and the documents of title had been physically delivered to buyer, so dealer's insurance covered liability for an accident involving buyer's brother's operation of the vehicle. Glen Falls Ins. Co. v. Irion, 323 F Supp 1164.

Where buyer took possession of vehicle and executed application for certificate of title on Saturday and dealer-seller endorsed the old certificate and delivered the documents to the county treasurer on Monday, the next day of business for that office, the requirements of section 53-109 were met and title passed as of Saturday, despite former subsection (d) of section 53-109 and despite death of buyer later on Saturday, so that seller's insurance policy did not cover liability for accident arising out of operation of vehicle with buyer's consent occurring on Saturday after delivery of vehicle to buyer. Phoenix Ins. Co. v. Newell, 329 F Supp 172, distinguished in 343 F Supp 576, 581.

Where, at the time of an accident arising out of operation of the vehicle by buyer's employee, the vehicle had been delivered to buyer but buyer had not executed an application for certificate of title, the title had not passed under former subsection (d) of section 53-109, and the subsequent registration of the transfer could not cause the transfer to relate back to the time the vehicle was delivered to the buyer but only to the time that buyer executed an application for certifi-

cate of title; therefore, liability arising out of the accident was covered by seller's insurance. American States Ins. Co. v. Angstman Motors, Inc., 343 F Supp 576.

53-109.2. Applicability of sticker provisions to new car purchases. The provisions of section 3 [53-109.1], subsection (1), pertaining to the issuance of a sticker by the dealer, placement thereof upon the rear windshield of the vehicle prior to delivery, and transmission of a copy of said sticker to the county treasurer, either personally or by first class mail within ten (10) days following delivery of said vehicle, shall be applicable to sales of new motor vehicles as well as to sales of used motor vehicles.

History: En. Sec. 4, Ch. 138, L. 1971.

53-109.3. Temporary windshield sticker. Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of said vehicle, because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere, may, upon making affidavit to that effect upon a form prescribed by the registrar and upon the payment of a fee of two dollars ($2) to be collected by the county treasurer and remitted to the registrar, obtain from the county treasurer of the county in which said vehicle is subject to tax, a temporary windshield sticker of such size, color and design as the registrar may prescribe, to be validated by the county treasurer for a period of sixty (60) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, and no person shall purchase, more than one (1) sixty (60) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous sixty (60) day windshield sticker.

History: En. Sec. 5, Ch. 138, L. 1971.

53-109.4. Grace period—penalty. Any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of ten (10) days from the date of purchase to make application for registration and to obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such vehicle upon the streets and highways of this state without a certificate or registration and registration plates during the said ten (10) day period; provided that at all times during said period the sticker issued by the dealer at the time of purchase shall remain affixed to said vehicle as provided in section 3 [53-109.1]. Failure to make such application within the time provided herein shall subject the purchaser to a penalty of ten dollars ($10), plus one dollar ($1) for each additional day in which said vehicle remains unregistered, not to exceed twenty-five dollars ($25), said penalty to be collected by the county treasurer at the

time of registration, and in addition to the fees otherwise provided by law.

History: En. Sec. 8, Ch. 138, L. 1971.

Repealing Clause

Section 9 of Ch. 138, Laws 1971 repealed all acts and parts of acts in conflict therewith.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * * [Same as parent volume.]

(b) Satisfactions or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar ($1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). * * * [Same as parent volume.]

(h) A fee of two dollars ($2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of two dollars ($2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars ($2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in

the office of the registrar, or for filing any assignment of any instrument on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from $1.00 to $2.00, for certified copies from 50¢ to $2.00, and for filing assignments from 50¢ to $2.00; and added the last sentence to subsection (h).

Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales contract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under subsection (c) of this section. Williamson v. Skerritt, 141 M 422, 378 P 2d 215.

53-112. (1758.4) Fee for original certificate of ownership and transfer of title. A charge of two dollars ($2.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) One dollar ($1.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence from $1.00 to $2.00; inserted "and for a transfer of registration" in the first sentence; deleted "for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sentence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one dollar ($1.00) shall be remitted to the registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by

the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar ($1.00)."

Cross-References

Junk vehicle disposal fees payable on title certificates and transfers, sec. 69-6807.

53-113. (1758.5) **Lost certificates.** In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars ($2.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from $1.00 to $2.00.

53-114. (1759) **Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, which application shall contain:

(a) and (b). * * * [Same as parent volume.]

(c) Description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) and (e). * * * [Same as parent volume.]

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M., 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R. C. M., 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101, R.C.M., 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M., 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M., 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971.

Amendments

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry

on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

Chapter 290, Laws of 1967, inserted "or the new motor vehicle sales tax" after "taxes assessed" in the first sentence of subdivision (3).

Chapter 296, Laws of 1967, in subsection (2), added "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" at the beginning of the subsection and deleted "the applicant shall" before "submit the same"; in subsection (3), substituted "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" for "The applicant shall" before "upon the filing of" at the beginning of the subsection; in subsection (4), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "said motor vehicle"; in subsection (5), inserted "except mobile homes as defined in section 84-101, R. C. M. 1947" after "Mobile vehicles" near the beginning of the subsection; in subsection (6), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "unused motor vehicle" and substituted "section 32-3315, R. C. M. 1947" for "section 53-617" after "tax provided by."

The 1971 amendment deleted "executed in quintuplet" near the end of the preliminary paragraph of subsection (1); substituted "engine or serial number" for "engine and serial number" in subdivision (1)(c); and made minor changes in punctuation and style.

Separability Clause

Section 10 of Ch. 296, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-115. (1759.1) **Time for making application.** Registration must be renewed annually and license fees paid annually. All registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not later than February 15 of each year. Provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969.

Amendments

The 1967 amendment changed the late date for registration or reregistration from February 1 to February 15.

The 1969 amendment added the proviso.

53-117. (1759.3) **Disposition of taxes.** The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section sentences reading, "All motor vehicle license fees collected by the

county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of operating the motor vehicle department of the state of Montana, shall be paid out of the motor vehicle recording fund (sometimes called the motor vehicle administrative fund); provided, however that each county shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles. The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

53-118. (1759.4) Application for dealer's license. Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than five hundred (500) pounds), semitrailers or special mobile equipment as defined in section 53-642 and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealer's license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," "DTR," or "MCD" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) The name under which the business is conducted;

(b) Location of premises (street, address, city, county and state) where records are kept, sales are made and stock of motor vehicles displayed;

(c) Name and address of all owners or persons having an interest in the business; provided, however, that in the case of a corporation, the names and addresses of the president and secretary thereof will be sufficient;

(d) Name and make of all vehicles handled, if factory franchised or selling under a written agreement with a manufacturer, importer or distributor;

(e) Whether or not used vehicles are handled exclusively;

(f) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, trailers, semitrailers or special mobile equipment; and that the applicant if a dealer in new motor vehicles, is recognized by a manufacturer, importer or distributor as a dealer in particular makes of new motor vehicles.

(g) Other information required by the registrar to efficiently administer this law.

The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of five thousand dollars ($5,000).

and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office and shall be renewed annually.

The registrar of motor vehicles shall not register or license as a dealer any applicant for the sale of new motor vehicles at retail unless such applicant owns, leases or rents a permanent building wherein he shall conduct his business and who has a dealers' franchise from a manufacturer of motor vehicles. A private residence, tent, or temporary building is not a sufficiently permanent place of business within the meaning of this section. The registrar of motor vehicles shall not register or license any applicant as a dealer in used cars unless such applicant furnishes sufficient evidence to the registrar that he has a building or lot to provide display of merchandise, a sign indicating the firm name and headquarters as the principal place of business.

Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars ($5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer, semitrailer or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar

to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers, semitrailers or special mobile equipment (new or used) only, and the letters "MCD" if the dealer sells vehicles of the motorcycle type. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer. The registrar of motor vehicles shall cause to be placed on each set of license plates issued to a dealer, a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: Dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2 and 5-4-3. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for sale or used principally in the conduct of the dealer's business in selling or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease or rental or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one permitted above, or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than five hundred (500) pounds).

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than two hundred fifty dollars ($250) and not more than five hundred dollars ($500). For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 226 and once by Ch. 244. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict the compiler has made a com-

posite section incorporating both amendments.

Amendments

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first paragraph, inserted "except trailers * * * pounds" after "trailers" in the first sentence, substituted "Montana highway patrol" for "sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below" in the second sentence and deleted a third sentence which read "A fee of two dollars ($2) shall be paid to the sheriff for such verification"; in the second paragraph, substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000.00)" and added "and shall be renewed annually"; in the sixth paragraph inserted the third and fourth sentences, deleted "exclusively" before "for hire" and inserted "lease or rental" in the sixth sentence, and added "except trailers * * * pounds" at the end of the eighth sentence; and, in the seventh paragraph changed the minimum fine from $50 to $250 and the maximum fine from $300 to $500.

Chapter 226, Laws of 1971, inserted references to motorcycle dealers and to MCD plates near the end of the paragraph preceding the lettered subdivisions and in two places in the fifth paragraph following the lettered subdivisions, and made minor changes in style.

Chapter 244, Laws of 1971, inserted references to special mobile equipment dealers near the middle of the paragraph preceding the lettered subdivisions, in subdivision (f), in the fourth paragraph following the lettered subdivisions, and in two places in the fifth paragraph following the lettered subdivisions; and made minor changes in style, phraseology, and punctuation.

Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

Dealer's Plates

Fact that dealer-transferor placed dealer's plates on automobile sold on Saturday in order that transferee might drive the vehicle over the weekend did not estop dealer and his insurer from denying ownership of vehicle at time of accident later that day. Phoenix Ins. Co. v. Newell, 329 F Supp 172.

53-118.1 to 53-118.5. Repealed.

Repeal

Sections 53-118.1 to 53-118.5 (Secs. 1 to 5, Ch. 36, L. 1965), relating to truck demonstration permits, were repealed by Sec. 6, Ch. 209, Laws 1971.

53-118.6. Demonstration of trucks and trailers authorized—dealer's plate to be used. A new or used truck or trailer dealer licensed under section 53-118 may demonstrate to a prospective purchaser any truck, truck tractor, trailer or semitrailer, owned by or consigned to said dealer, or otherwise controlled by said dealer, by payment of the fees required in this section; provided the vehicle displays the dealer's registration plate or other current Montana registration and the demonstration permit provided in Title 32, chapter 33, R. C. M. 1947, chapter 197, Laws of 1965.

History: En. Sec. 1, Ch. 209, L. 1971.

Title of Act

An act requiring a licensed truck or trailer dealer to secure a demonstration permit for purposes of demonstration only, affixing the fees and terms of said permits, affixing a penalty and repealing sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as section 2, Chapter 36, Laws of 1965.

53-118.7. Application for truck demonstration permit—form and contents—number of permits authorized. The licensed dealer shall obtain the demonstration permit upon application to the Montana highway commission and payment of eight dollars ($8) for each permit and the payment of this fee shall be in lieu of fees required under Title 32, chapter 33. The form of such permits and the application therefor shall be pro-

vided by the state highway commission under such rules and regulations as they may prescribe and shall be designed so that the licensed dealer may fill in the necessary information thereon and such permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of said licensed dealer. The licensed dealer may obtain more than one (1) but not to exceed five (5) demonstration permits with each application.

History: En. Sec. 2, Ch. 209, L. 1971.

53-118.8. Operation under truck demonstration permit—period of permit—rental under permit prohibited. Vehicles displaying said permit may be operated either laden or unladen. Each of the said permits shall expire seven (7) days from and after the date of validation by the licensed dealer.

A demonstration permit shall not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

The vehicle operating with the demonstration permit shall not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer whatsoever.

History: En. Sec. 3, Ch. 209, L. 1971.

53-118.9. Violation of truck demonstration provisions. Violation of any provision of this section shall be deemed a misdemeanor and subject to the provisions of section 32-3316. For the purposes of this section, a licensed dealer shall be considered the owner.

History: En. Sec. 4, Ch. 209, L. 1971.

53-118.10. Disposition of truck demonstration fees. Fees collected under this section shall be disposed of in the manner provided in section 32-3204, R. C. M. 1947.

History: En. Sec. 5, Ch. 209, L. 1971.

Repealing Clause

Section 6 of Ch. 209, Laws 1971 read "Sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as in section 2, Chapter 36, Laws of 1965, are hereby repealed."

53-119. (1759.5) **Must have license plates.** Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semitrailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for registration. Provided, however,

that the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which said motor vehicle passes in its regular scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on said motor vehicle in any other county of the state. It is further provided that it shall be unlawful to use license plates issued to one (1) vehicle on any other vehicle, trailers or semitrailers unless legally transferred as provided by statute, or repainting old license plates to resemble current license plates and any person violating these provisions shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 53-132.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "registration" for "and issuance of said license plates" at the end of the third sentence, deleted a statement of the validity of a current year's license plate used on the transfer of ownership of any used motor vehicle in the first proviso, and, in the last sentence, inserted "unless legally transferred as provided by statute" after "semitrailers."

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars ($5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965.

Compiler's Notes

Sections 53-615, 53-630, 53-631, and 53-634 through 53-638, referred to in the first paragraph of this section, were repealed by Sec. 12-109, Ch. 197, Laws 1965.

Amendment

The 1965 amendment substituted the first paragraph for a sentence reading, "When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment therefor of a fee of five dollars ($5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

53-120. (1759.6) **Replacing number plates.** In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars ($2.00). In the event of loss, mutilation, or destruction of Pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of five dollars ($5.00).

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971.

Amendments

The 1969 amendment added provision for obtaining duplicate Pioneer plates.

The 1971 amendment inserted the reference to validation devices in the first sentence.

53-122. (1760) **Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.** Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

All dealers in motor vehicles, a fee of thirty dollars ($30.00): which shall entitle such dealer to two (2) sets of number plates, and five dollars ($5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars ($2.00) additional fee for each additional set of number plates, as may be applied for;

Dealers in motorcycles, trailers including house trailers, thirty dollars ($30);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars ($5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars ($10.00);

Electrically driven passenger vehicles, ten dollars ($10.00);

All motorcycles, two dollars ($2.00);

Tractors and/or trucks, ten dollars ($10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars ($2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars ($5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars ($10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars ($15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar ($1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half (½) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars ($2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including

the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund and shall be used to pay" in what is now the last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, amended former paragraph (c), for previous text of which see parent volume, to read, "In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a prorata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated wtihin the county, but outside the corporate limits of any incorporated cities and towns"; inserted immediately after former paragraph (c) two new paragraphs reading, "The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town" and "The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county"; and added a final paragraph reading, "The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund."

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from $1.00 to $2.00; substituted "unless otherwise specifically provided" for "men-

tioned and described in sections 53-110 and 53-112, and in section 53-135" near the beginning of what is now the final paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, effective December 31, 1966, deleted several paragraphs relating to the county motor vehicle license fund, for text of which see pages 538 and 539 in parent volume and above note relating to Chapter 178, Laws 1963; and deleted the three paragraphs inserted and added by Chapter 178, Laws 1963.

The 1971 amendment deleted "other than motorcycles" following "dealers in motor vehicles" at the beginning of the second paragraph; deleted from the end of the second paragraph a proviso reading "provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms"; increased the fee for dealers in motorcycles and trailers from $15.00 to $30.00; and made minor changes in phraseology.

Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, and the payment of property taxes as is required by sections 84-6008 or 84-406, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967.

Amendments

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and substituted "under the provisions of this act" for "as hereinafter set forth" after "entered into under" at the end of this section.

The 1967 amendment inserted "and/or user" after "owner" and substituted "if such owner and/or user is" for "while" after "uses the vehicle" in the first sentence; inserted "and the payment of property taxes as is required by sections 84-6008 or 84-406" after "county treasurer" in the second sentence; deleted "which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle" before "covered by" and substituted "the laws of Montana" for "this act" after "the provisions of" in the last sentence.

53-133. (1763) **Definitions.** The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a to f. * * * [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. * * * [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

Amendment

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after "firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section 53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

Repealing Clauses

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-136. (1763.4) **Alteration or forgery of certificate of title or assignment thereof and penalty therefor.** Any person who shall alter or forge or cause to be altered or forged, any motor vehicle certificate of title or any assignment thereof, or who shall hold or use any such certificate or assignment knowing the same to have been altered or forged, shall be deemed guilty of a felony, upon which conviction thereof shall be liable to pay a fine of not more than five thousand dollars ($5,000) or to imprisonment in any penal institution within the state for a period of not more than ten (10) years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; amd. Sec. 1, Ch. 334, L. 1969.

Amendments

The 1969 amendment inserted "motor vehicle" before "certificate of title" and deleted "issued by the registrar of motor vehicles pursuant to the provisions of this section" after "certificate of title."

53-138. (1763.6) **Repealed.**

Repeal

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

53-139. (1763.7) **Penalty for sale of vehicle with engine number altered or changed—application for special number.** (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or

cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) * * * [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars ($2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

History: En. Sec. 15, Ch. 113, L. 1925; amd. Sec. 31, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified near the beginning of subsection (3) from $1.00 to $2.00; and made minor changes in subsections (1) and (4).

53-139.1. Penalty for altering identification number. A person who willfully removes or falsifies an identification number of a motor vehicle or engine for a motor vehicle is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 256, L. 1969.

Title of Act

An act to make unlawful acts relating to altering the identification numbers of motor vehicles.

53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969.

Title of Act

An act pertaining to the registration of motor vehicles; requiring removal of license plates from motor vehicles upon transfer of ownership, authorizing transferor to transfer license plates from original motor vehicle to another motor vehicle acquired during current registration year upon proper application and payment of fees and taxes, if any; requiring new application and registration for all motor vehicles transferred within ten (10) days; and amending sections 32-3203, 53-106, 53-106.6, 53-107, 53-108, 53-115 and 53-119, R. C. M. 1947.

53-146. Transfer of license plates to another motor vehicle. Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year, he may file an application, in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the registrar of motor vehicles, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within ten (10) days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

History: En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971.

Amendments

The 1971 amendment inserted "application for" before "transfer of the license plates" at the beginning of the second sentence.

53-147. New registration required for transferred vehicle. Except as otherwise provided herein, the new owner of the transferred motor vehicle shall, before operating or driving the same upon the public highways of this state, make application and pay the registration fees and taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year.

History: En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971.

Amendments

The 1971 amendment inserted "Except as otherwise provided herein" at the beginning of the section.

53-148. Personalized license plates authorized. Any person who is the registered owner of a passenger motor vehicle registered with the registrar of motor vehicles, or who makes application for original registration of a passenger motor vehicle or renewal registration of a passenger motor vehicle may, upon payment of the fee prescribed in section 6 [53-153] of this act, apply to the registrar of motor vehicles for personalized license plates, in the manner prescribed in section 5 [53-152] of

this act which plates shall be affixed to the passenger motor vehicle for which registration is sought in lieu of the regular license plates provided for in this article [chapter].

History: En. 53-148 by Sec. 1, Ch. 257, L. 1973.

Title of Act

An act to allow the registered owner of a passenger motor vehicle registered with the registrar of motor vehicles to obtain personalized license plates.

53-149. Color and design of personalized plates. The personalized license plates shall be the same color and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight (8) positions and not less than two (2) positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle or special license plate series under this title.

History: En. 53-149 by Sec. 2, Ch. 257, L. 1973.

53-150. Definition of personalized license plates. Personalized license plates, as used in this article [chapter], mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

History: En. 53-150 by Sec. 3, Ch. 257, L. 1973.

53-151. Personalized license plates restricted to registered owner. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

History: En. 53-151 by Sec. 4, Ch. 257, L. 1973.

53-152. Application for personalized plates—duplication—good taste. An applicant for issuance of personalized license plates or renewal of such plates in subsequent years pursuant to this act shall file an application therefor in such form and by such date as the department may require, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the registrar of motor vehicles may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which would be misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257, L. 1973.

53-153. Fees for personalized plates—disposition. In addition to all other fees and taxes imposed by law, the applicant for a personalized

license plate shall pay a fee of twenty dollars ($20) for the original personalized license plate and a fee of five dollars ($5) for each transfer or renewal thereof. All revenue derived from the fee as provided herein shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. 53-153 by Sec. 6, Ch. 257, L. 1973.

CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS—ACCIDENTS—SERVICE OF PROCESS

53-202. Secretary of state attorney for service of process.

References

Olsen v. Dairyland Mut. Ins. Co., 248 F Supp 639.

53-203. Operation of motor vehicle as appointment, etc.

References

Olsen v. Dairyland Mut. Ins. Co., 248 F Supp 639.

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937; Sec. 10, Ch. 117, L. 1961), relating to service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-418. Definitions.
53-420. Supervisor to furnish operating record.
53-421. Report required following accident.
53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance.
53-431. Suspension to continue until judgments paid and proof given—maximum period of suspension.
53-432. Satisfaction of judgments.
53-438. Motor vehicle liability policy defined.

53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1 to 11. * * * [Same as parent volume.]

12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars ($20,000) because of bodily injury to or death of two or

more persons in any one accident, and in the amount of five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

13 and 14. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967.

Amendments

The 1967 amendment amended subsection 12 to increase the minimum requirements of financial responsibility from $5,000 to $10,000 for bodily injury to or death of one person in any one accident, from $10,000 to $20,000 for bodily injury to or death of two or more persons in any one accident, and from $1,000 to $5,000 for injury to or destruction of property of others in any one accident.

Intent of Legislature

General legislative intent in enacting financial responsibility provisions of the Motor Vehicle Safety Responsibility Act was: (1) to provide for voluntary and not compulsory automobile liability insurance for motorist who has not become involved in automobile accident, (2) to require compulsory proof of ability to respond in damages resulting from automobile accident after motorist becomes involved in such accident, and (3) to require compulsory proof of financial responsibility for future automobile accidents, from motorist (a) convicted of certain driving offenses, or (b) who has outstanding unsatisfied judgment against him as result of past automobile accident; motorist who voluntarily carried ordinary automobile liability policy at time he became involved in accident was exempted from requirements of proof of ability to respond in damages whereas motorist who has neither been convicted nor forfeited bail for one of driving offenses referred to in act nor who has outstanding unsatisfied judgment against him as result of previous automobile accident is not required to furnish proof of future financial responsibility at all. Boldt v. State Farm Mut. Automobile Ins. Co., 151 M 337, 443 P 2d 33.

Cross-References

Highway patrol board abolished and functions transferred, sec. 82A-1205 (2).

Highway patrol functions transferred, sec. 82A-1206.

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

References

Schwentner v. White, 199 F Supp 710, 711.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of two dollars ($2) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971.

Amendments

The 1965 amendment increased the fee specified in the final sentence from 50¢ to $1.00.

The 1971 amendment increased the fee specified in the final sentence from $1.00 to $2.00.

53-421. Report required following accident. In addition to the reports required under chapter 12, Title 32 of the R. C. M. 1947, the operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or injured or in which damage to the property of any one person in excess of two hundred and fifty dollars ($250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor. Such report, the

form of which shall be prescribed by the supervisor, shall contain information to enable the supervisor to determine whether the requirements for the deposit of security under section 53-422 are inapplicable by reason of the existence of insurance or other exceptions specified in this act. The supervisor may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, then any person may do so for and on his behalf. The operator or the owner shall furnish such additional relevant information as the supervisor shall require.

History: En. Sec. 4, Ch. 204, L. 1951; amd. Sec. 1, Ch. 55, L. 1971.

Amendments

The 1971 amendment increased the minimum damage specified in the first sentence from $100 to $250.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance. (a) If within twenty (20) days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of two hundred fifty dollars ($250), the supervisor does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the supervisor shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b). * * * [Same as parent volume.]

(c) This section shall not apply under the conditions stated in section 53-423, nor;

1. to such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the supervisor, covered by any other form of liability insurance policy or bond; nor

4. to any person qualifying as a self-insurer under section 53-451, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere

than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the supervisor to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars ($20,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

History: En. Sec. 5, Ch. 204, L. 1951; amd. Sec. 1, Ch. 83, L. 1959; amd. Sec. 2, Ch. 30, L. 1967; amd. Sec. 1, Ch. 56, L. 1971.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from $5,000 because of bodily injury to or death of one person in any one accident to $10,000; increased from $10,000 to $20,000 the amount required for bodily injury to or death of two or more persons in any one accident; and increased from $1,000 to $5,000 the amount required for injury to or destruction of property of others in any one accident, all in the last paragraph.

The 1971 amendment increased the minimum damage amount specified in subsection (a) from $100 to $250.

53-431. Suspension to continue until judgments paid and proof given —maximum period of suspension. Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 53-430 and 53-433, or six (6) years have passed from date judgment was first entered as provided in section 93-5708.

History: En. Sec. 14, Ch. 204, L. 1951; amd. Sec. 1, Ch. 437, L. 1973.

Amendments

The 1973 amendment added "or six (6) years have passed from the date judgment was first entered as provided in section 93-5708" to the end of the first paragraph; and deleted a second paragraph purporting to save the requirements of the act against a discharge in bankruptcy.

53-432. Satisfaction of judgments. Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when ten thousand dollars ($10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

2. when, subject to such limit of ten thousand dollars ($10,000) because of bodily injury to or death of one person, the sum of twenty thou-

sand dollars ($20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two or more persons as the result of any one accident; or

3. when five thousand dollars ($5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967.

Amendments

The 1967 amendment doubled the amounts required by paragraphs 1 and 2; and increased the amount required by paragraph 3 from $1,000 to $5,000.

53-438. Motor vehicle liability policy defined. (a). * * * [Same as parent volume.]

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars ($20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(c) to (f). * * * [Same as parent volume.]

(g) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in chapter 201 of Title 93 R. C. M. 1947, or pays damages to another party whether by settlement or otherwise.

(h) * * * [Same as (g) in parent volume.]

(i) * * * [Same as (h) in parent volume.]

(j) * * * [Same as (i) in parent volume.]

(k) * * * [Same as (j) in parent volume.]

(l) * * * [Same as (k) in parent volume.]

(m) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section.

History: En. 21, Ch. 204, L. 1951; amd. Sec. 1, Ch. 177, L. 1973; amd. Sec. 1, Ch. 260, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 177 and once by Ch. 260. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from $5,000 to $10,000 because of bodily injury to or death of one person in any one accident, from $10,000 to $20,000 because of bodily injury to or death of two or more persons in any one accident, and from $1,000 to $5,000 because of injury to or destruction of property of others in any accident, all in subsection (b).

Chapter 177, Laws of 1973 inserted subsection (g); and relettered the succeeding subsections.

Chapter 260, Laws of 1973, added as subsection (l) the matter shown above as subsection (m).

Defenses Available to Insurer

Insurance company being sued by injured party for amount of judgment previously secured against insured motorist was entitled to defend on ground that accident was not reported to it until year later, in breach of the policy provisions requiring prompt notice, despite contention that policy was subject to that portion of act eliminating policy defenses. Boldt v. State Farm Mut. Automobile Ins. Co., 151 M 337, 443 P 2d 33.

Garage Business Exclusion

Garage business exclusion clause of policy was not violative of public policy as expressed in statute in absence of showing that policy was issued to show proof of financial responsibility. Northern Assurance Co. of America v. Truck Ins. Exchange, 151 M 132, 439 P 2d 760.

Permitted User

Driver of insured's automobile was permitted user under this section even though permission came from insured's son and even though son had been told not to lend out the automobile, since the automobile was purchased for son's exclusive use away from home and son had ostensible authority to permit its use by third party. Cascade Ins. Co. v. Glacier General Ins. Co., 156 M 236, 479 P 2d 259.

Primary and Secondary Insurance

Where first liability policy provided primary coverage to driver when he was driving other vehicles except when there was "other collectible insurance" in which case it provided excess coverage, and second liability policy owned by auto agency insured driver only if there were "no other valid and collectible automobile liability insurance," the first policy was liable for the cost of defending an action for damages arising out of the accident. Phoenix Ins. Co. v. Nationwide Mutual Ins. Co., 335 F Supp 671.

References

Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

CHAPTER 5—STATE-OWNED OR LEASED MOTOR VEHICLES

Section 53-514. Highway commission to be custodian of motor vehicles owned or leased by state.
53-515. Rules and regulations—authority and enforcement.
53-516. Seal on motor vehicles.
53-517. State car for state business only—compensation for driving personal vehicle.
53-518. Adoption of travel regulations—contents—removal from office for violations.
53-519. Requisitions for purchases—operating history records.
53-520. Certain motor vehicles exempted.
53-521. Violation a misdemeanor—dismissal.

53-501. Repealed.

Repeal

Section 53-501 (Sec. 1, Ch. 2, L. 1941; Sec. 1, Ch. 211, L. 1953), relating to color and labeling of state-owned vehicles, was repealed by Sec. 9, Ch. 320, Laws 1971.

53-503 to 53-508. Repealed.

Repeal

Sections 53-503 to 53-508 (Secs. 1 to 6, Ch. 93, L. 1941; Secs. 2 to 6, Ch. 211, L. 1953; Sec. 1, Ch. 157, L. 1961), relating to the use of state-owned vehicles, were repealed by Sec. 9, Ch. 320, Laws 1971.

53-510 to 53-513. Repealed.

Repeal

Sections 53-510 to 53-513 (Sec. 9, Ch. 93, L. 1941; Sec. 7, Ch. 211, L. 1953; Secs. 1 to 3, Ch. 181, L. 1969), relating to the state motor vehicle pool, were repealed by Sec. 9, Ch. 320, Laws 1971.

53-514. Highway commission to be custodian of motor vehicles owned or leased by state. The state highway commission is hereby constituted the custodian of all motor vehicles owned or leased by the state of Montana or its boards, commissions or agencies operated out of any areas or locations where five (5) or more state vehicles or three (3) or more state agencies are located.

History: En. Sec. 1, Ch. 320, L. 1971.

Title of Act

An act providing for the transfer of authority of state-owned motor vehicles to the highway commission; providing for the establishment of a state motor pool for maintenance and storage; providing for regulation and use of vehicles; providing for lettering and identification; providing for records; providing for exceptions; establishing a penalty and repealing sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as Chapter 181, Laws of 1969.

Cross-References

Highway commission functions transferred, sec. 82A-703.

53-515. Rules and regulations—authority and enforcement. The state highway commission is hereby delegated the power and authority to formulate and enforce reasonable rules and regulations governing the use and operation of all motor vehicles used in the service of the state of Montana consistent with the terms of this act. The commission shall have the authority to assign the use of all state-owned motor vehicles to state officers, departments, bureaus, institutions and commissions, or employees thereof. All actual costs for maintenance, service and storage to these state vehicles shall be paid to the highway commission by the individual state agencies involved.

History: En. Sec. 2, Ch. 320, L. 1971.

53-516. Seal on motor vehicles. Every motor vehicle owned by the state of Montana shall have a seal eight (8) inches in diameter placed upon the vehicle in accordance with the rules and regulations adopted by the highway commission.

History: En. Sec. 3, Ch. 320, L. 1971.

53-517. State car for state business only—compensation for driving personal vehicle. No state officer or employee shall use any state-owned vehicle for his own personal and private use, nor shall he be compensated for driving his own vehicle except if such motor vehicle is on state business.

History: En. Sec. 4, Ch. 320, L. 1971.

53-518. Adoption of travel regulations—contents—removal from office for violations. The state highway commission shall adopt and formulate travel regulations providing:

(a) Filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) Filing a report upon completion of the trip, showing actual points reached, mileage traveled and car cost record data;

(c) Recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and,

(d) That a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained thereon:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned.

History: En. Sec. 5, Ch. 320, L. 1971.

53-519. Requisitions for purchases—operating history records. All requisitions for automobile purchases shall be submitted to the state controller twice yearly, at such times as he may specify and no other requisitions for automobile purchases shall be accepted by him, unless the governor shall deem such purchase to be an emergency necessity.

All automobile operating history records shall be entered in the office of the state controller, such records to include the purchase price of the vehicle and items of expense incurred in the operation of the vehicle to include gas, oil, repairs, labor, storage and service. A complete summary of the operating cost and history record of all state-owned vehicles and trucks shall be prepared for each fiscal year.

History: En. Sec. 6, Ch. 320, L. 1971.

53-520. Certain motor vehicles exempted. The provisions of this act shall not be applicable to any motor vehicle used in service of the governor, the attorney general or the highway patrol.

History: En. Sec. 7, Ch. 320, L. 1971.

53-521. Violation a misdemeanor—dismissal. Any state officer or employee violating any of the provisions of this act shall upon conviction thereof be guilty of a misdemeanor, and such violator shall upon conviction be dismissed from state employment.

History: En. Sec. 8, Ch. 320, L. 1971.

Repealing Clause

Section 9 of Ch. 320, Laws 1971 read "Sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as chapter 181, Laws of 1969, are hereby repealed."

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

Section 53-626. Exemptions from act.
53-638.1. Exemptions of vehicles not capable of operation on highways.
53-642. "Special mobile equipment" defined.
53-644. Camper—definition.
53-645. Tax-paid decal required on camper—application for decal—fee—issuance.
53-646. Violation as misdemeanor—fine.
53-647. Annual application for decals—grace period.

53-615 to 53-619. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 219, L. 1951; Sec. 1, Ch. 139, L. 1953; Sec. 1, Ch. 89, L. 1955; Sec. 1, Ch. 175, L. 1955; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 258, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961; Sec. 1, Ch. 150, L. 1963; Sec. 1, Ch. 195, L. 1965; Sec. 1, Ch. 224, L. 1965), relating to additional fees and taxes payable for vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3201, 32-3301 to 32-3310, 32-3312, 32-3314, and 32-3315.

53-621 to 53-623. Repealed.

Repeal

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to reciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-626. Exemptions from act. Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits shall be exempt from the provisions of this act; provided that motor vehicles brought or driven into Montana by any nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where said motor vehicles are used exclusively for transportation of agricultural workers shall likewise be exempt from the provisions of this act; and further providing all vehicles lawfully displaying a licensed dealer's plate as provided in section 53-122, Revised Codes of Montana, 1947, shall be exempt from the provisions of this act when moving to or from a dealer's place of business when unladen or laden with dealer's property only, and, in the case of vehicles having a gross laden weight of less than twenty-four thousand (24,000) pounds, while in the process of demonstration in the course of the dealer's business.

History: En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973.

Amendments

The 1967 amendment added the second proviso at the end of this section.

The 1973 amendment added the exemption for demonstration of vehicles under 24,000 pounds; and made a minor change in style.

53-628 to 53-631. Repealed.

Repeal

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-634 to 53-638. Repealed.

Repeal

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-638.1. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, shall not be subject to any of the terms and provisions of Title 53, R.C.M. 1947.

History: En. Sec. 3, Ch. 150, L. 1963.

Effective Date

Section 4 of Ch. 150, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

53-639. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1955), relating to special mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunkhouses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R.C.M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent

haul roads. However, the term "special mobile equipment" shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955; amd. Sec. 2, Ch. 150, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous version, see parent volume.

53-643. Repealed.

Repeal

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-644. Camper—definition. The term camper as used in this act includes but is not limited to truck camper, chassis mounted camper, cab over, half cab over, non cab over, topper, telescopic, and telescopic cab over.

History: En. Sec. 1, Ch. 414, L. 1973.

Title of Act

An act requiring each camper to be registered and to display identifying number and decal; charging each camper owner a one dollar ($1) fee for registration of each camper; amending section 84-406, R. C. M. 1947; and providing an effective date and penalty.

53-645. Tax-paid decal required on camper—application for decal—fee—issuance. No camper, subject to taxation in Montana, shall be operated by any person in the state of Montana on the public highways or streets unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, name of manufacturer, model number, make, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the department may require. Said application shall be signed by the county treasurer and transmitted by him to the department accompanied by a fee of one dollar ($1). Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically.

History: En. Sec. 2, Ch. 414, L. 1973.

53-646. Violation as misdemeanor—fine. Operation of a camper in violation of this act is a misdemeanor punishable by a fine not to exceed fifty dollars ($50).

History: En. Sec. 3, Ch. 414, L. 1973.

53-647. Annual application for decals—grace period. Application must be made to the department of revenue or county treasurer for the

issuance of tax-paid decals annually. Campers may be operated between January 1 and February 15 in each year without displaying the current year's decal.

History: En. Sec. 4, Ch. 414, L. 1973.

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

Section 53-701. Declaration of policy.
53-702. Definitions.
53-703. Montana motor vehicle reciprocity board creation.
53-704. Authority of Montana motor vehicle reciprocity board.
53-705. Authority for reciprocity agreements, provisions, reciprocity standards.
53-706. Base state registration reciprocity.
53-707. Proportional registration of fleet vehicles.
53-708. Declarations of extent of reciprocity.
53-709. Extension of reciprocal privileges to lessees authorized.
53-710. Automatic reciprocity.
53-711. Proportional registration not exclusive.
53-712. Proportional registration of fleet vehicles, application, fee-formula and payment.
53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
53-714. Proportional registration cannot be in a single jurisdiction.
53-715. Registration of additional fleet vehicles.
53-716. Withdrawal of fleet vehicles, credits and accounting.
53-717. New fleet—estimated mileage.
53-718. Fleet registration may be denied.
53-719. Preservation of proportional registration records.
53-720. Relation to other state laws.
53-721. Suspension of reciprocity benefits.
53-722. Agreements to be written, filed and available for distribution.
53-723. Reciprocity agreements in effect at time of act.
53-724. Act part of and supplement to motor vehicle registration law.

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

53-702. Definitions. As used in this act: (1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting

devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963.

53-703. Montana motor vehicle reciprocity board creation. (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state department of revenue; one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members.

History: En. Sec. 3, Ch. 206, L. 1963; amd. Sec. 17, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence of subsection (1).

Cross-References

Board abolished and functions transferred, sec. 82A-702(4).

Quasi-judicial functions transferred to board of highway appeals, sec. 82A-705.

53-704. Authority of Montana motor vehicle reciprocity board. The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreements or declarations to carry out the provisions of this act.

History: En. Sec. 4, Ch. 206, L. 1963.

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963.

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license fees, taxes

or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965.

Amendment

The 1965 amendment substituted "license fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the Montana motor vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of Title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended and such property taxes if any be due thereon.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

History: En. Sec. 12, Ch. 206, L. 1963; amd. Sec. 2, Ch. 88, L. 1965.

Compiler's Notes

Section 53-615, referred to in subsection (2) (b) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Amendment

The 1965 amendment added "and such property taxes if any be due thereon" at the end of paragraph (2) (b).

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for such application and for the stickers or devices issued. A fee of two dollars ($2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

History: En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965.

Amendment

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

Effective Date

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original appli-

cation for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. **Withdrawal of fleet vehicles, credits and accounting.** If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced by 1/12 of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 [53-719] hereof. If any such credit is less than five dollars ($5.00), no credit shall be made or entered. In no event shall such amount be credited against fees other than those for such registration year, nor shall any such amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963.

53-717. **New fleet—estimated mileage.** The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

History: En. Sec. 17, Ch. 206, L. 1963.

53-718. **Fleet registration may be denied.** The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another

jurisdiction if the Montana motor vehicle reciprocity board shall find that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963.

53-719. Preservation of proportional registration records. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

History: En. Sec. 19, Ch. 206, L. 1963.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

History: En. Sec. 21, Ch. 206, L. 1963.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor vehicle reciprocity board shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act shall be a part of Title 53, R.C.M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963.

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid."

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.
53-802. Dealers and manufacturers exempt.
53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963.

Title of Act

An act to provide for the marking of motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each

offense by a fine of not more than one hundred dollars ($100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963.

Effective Date

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

CHAPTER 9—REMOVAL AND SALE OF ABANDONED VEHICLES

Section 53-901. Prohibition against parking or leaving vehicles on public or private property.
53-902. Taking vehicle into custody.
53-903. Notice to owner.
53-904. Reclaiming vehicle.
53-905. Sale of vehicle if not reclaimed.
53-906. Certificate of sale.
53-907. Issuing certificate of ownership.
53-908. Transmitting return of sale and balance of proceeds.
53-909. Penalty for violation and enforcement of provisions.

53-901. Prohibition against parking or leaving vehicles on public or private property. No vehicle shall be parked or left standing upon the right of way of any public highway for a period longer than forty-eight (48) hours, or upon a city street, any state, county or city property for a period longer than five (5) days.

History: En. Sec. 1, Ch. 288, L. 1967; amd. Sec. 1, Ch. 169, L. 1969.

Title of Act

An act to provide for the removal and disposal of abandoned motor vehicles and for related purposes.

Amendments

The 1969 amendment inserted "for a period longer than forty-eight (48) hours" after "public highway" and made minor changes in phraseology.

53-902. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on any public highway, or for a period of five (5) days or more on any city street, or public property.

(a) The Montana highway patrol if the vehicle is upon the right of way of any public highway other than county road.

(b) The sheriff of the county if the vehicle is upon the right of way of any county road or private property within the county.

(c) The city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its, or his personnel, equipment and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes.

History: En. Sec. 2, Ch. 288, L. 1967; amd. Sec. 2, Ch. 169, L. 1969.

Amendments

The 1969 amendment revised the first sentence of subsection (1) to reduce the abandonment period for vehicles found on public highways from five days to forty-eight hours.

53-903. Notice to owner. (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number, if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

History: En. Sec. 3, Ch. 288, L. 1967.

53-904. Reclaiming vehicle. The owner, lien holder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody, satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

History: En. Sec. 4, Ch. 288, L. 1967.

53-905. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in the preceding section within thirty (30) days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody, shall sell it at public auction in the manner provided in sections 93-5824 through 93-5832 of the Revised Codes of Montana, 1947.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967.

53-906. Certificate of sale. (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967.

53-907. Issuing certificate of ownership. The registrar of motor vehicles shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967.

53-908. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in section 5 [53-905], the sheriff shall transmit to the registrar of motor vehicles and to the county treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

History: En. Sec. 8, Ch. 288, L. 1967.

53-909. Penalty for violation and enforcement of provisions. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25), nor more than three hundred dollars ($300), or by imprisonment in the county jail for not less than five (5) days, nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967.

Separability Clause

Section 10 of Ch. 288, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Effective Date

Section 11 of Ch. 288, Laws 1967 read "This act shall become effective from and after the 1st day of July, 1967."

CHAPTER 10—SNOWMOBILES

Section 53-1012. Definition of terms.
53-1013. Certificate of ownership.
53-1014. Transfer of title or interest.
53-1015. Lost or mutilated certificates.
53-1016. Exemptions.
53-1017. Report of stolen and recovered snowmobiles.
53-1018. Operation on public roads and streets.
53-1019. Unlawful operation on streets and highways.
53-1020. Other unlawful operation.
53-1021. Accidents involving snowmobiles.
53-1022. Enforcement.
53-1023. Penalties.
53-1024. Tax on snowmobiles—definitions.
53-1025. Display of tax-paid decals on snowmobiles required—application and issuance.
53-1025.1. Duplicate registration receipt or decal.
53-1026. Application to be made annually—operation permitted after application for decal.
53-1027. Failure to display decal a misdemeanor—penalty.
53-1028. Officers authorized to enforce act.
53-1029. Issuance of dealer registration certificate.

53-1001 to 53-1011. Repealed.

Repeal

Sections 53-1001 to 53-1011 (Secs. 1 to 11, Ch. 326, L. 1969), relating to snowmobiles, were repealed by Sec. 13, Ch. 434, Laws 1971.

53-1012. Definition of terms. As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

(a) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(b) "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain, which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

(c) "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile, and entitled to the use or possession thereof.

(d) "Operator" shall include every person who operates or is in actual physical control of the operation of a snowmobile.

(e) "Roadway" shall include only those portions of any highway, road or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(f) "Commission" means the fish and game commission of the state of Montana.

History: En. Sec. 1, Ch. 434, L. 1971.

Title of Act

An act establishing certificates of ownership and records of theft of snowmobiles, regulating operation of snowmobiles, providing exemptions, transfer of interest, prohibiting licensing and registration by political subdivisions, establishing enforcement, and providing penalties for any violation of this act; repealing sections 53-1001 through 53-1011, R.C.M., 1947.

53-1013. Certificate of ownership. (1) No snowmobile shall be operated upon any public or private lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless it has first been registered with the state department of revenue in accordance with the laws of this state.

(2) Before such registration may be accomplished, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, and to provide for substantially the following information: Name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner, or by a properly authorized officer or representative of the owner.

(3) If a snowmobile has previously been registered, under the provisions of this act, the application for registration must be accompanied by the immediately previous registration receipt, or by an affidavit upon a prescribed form, stating under oath that the vehicle had not been operated during the immediately previous year; provided, however, that this paragraph shall not be applicable to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this act were not in force and effect.

(4) Upon completion of the application of registration, in quintuplicate, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application marked "owner's certificate of registration," one of which shall be marked "file copy," and forward one copy and the application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership, which shall contain the information found on the registration, and the owner shall, at all times, retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation.

(5) Upon application for an owner's certificate of registration, a fee of two dollars ($2) shall be paid to the county treasurer, one-half (½) of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a registration decal may be applied for pursuant to the laws of this state, the owner must present the owner's certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the registration decal.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsection (1).

53-1014. Transfer of title or interest. (1) Upon a transfer of any title or interest of an owner or owner in or to a snowmobile, registered under the provisions of this act as hereinbefore required, the person or persons whose title or interest is to be transferred shall write their signatures with pen and ink upon the certificate of ownership issued for such vehicle, in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under this act, to the registrar, who shall file the same upon receipt thereof and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of two dollars ($2) for each application for transfer of ownership.

(3) The provisions of subdivision (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement and the certificate of registration to the registrar, shall not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every such dealer shall upon transferring such interest deliver such certificate of ownership and certificate of registration with an application for registration executed by the new owner in accordance with the provisions of this act, and the registrar upon receipt of said certificate of ownership, certificate of registration and application for registration, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien.

History: En. Sec. 3, Ch. 434, L. 1971.

53-1015. Lost or mutilated certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of one dollar ($1).

History: En. Sec. 4, Ch. 434, L. 1971.

53-1016. Exemptions. (1) The provisions of this act, with respect to registration and certification of title, shall not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, or any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than thirty (30) days, or any snowmobile registered in another state of the United States, but to be temporarily used within this state for not more than thirty (30) days. Snowmobiles owned by the state of Montana, or any agency or political subdivision thereof, shall be exempt only from the payment of fees, but shall otherwise comply with all the requirements of this act.

(2) No political subdivisions of this state shall have authority to prescribe further licensing or registration of snowmobiles and no political subdivision shall levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971.

53-1017. Report of stolen and recovered snowmobiles. It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the registrar of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided for by the registrar of motor vehicles. Failure on the part of any officer shall be deemed to be misfeasance in office and shall constitute grounds for removal. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "stolen and recovered snowmobile index." It shall also be the duty of the registrar of motor vehicles to file reports of stolen and recovered snowmobiles reported to him from other states. The registrar of motor vehicles shall prepare once a month a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff, and all police departments in cities of the first, second and third class. Such list shall also be forwarded to the secretary of state, or other proper official, in each state of the United States. Before a certificate of title, as heretofore provided, shall be issued under this act, the motor and serial number on the motor vehicle to be registered shall be checked against the "stolen and recovered snowmobile index."

History: En. Sec. 6, Ch. 434, L. 1971.

53-1018. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled-access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any other public road or highway, state highway, county road, or city street located within the boundaries of any municipality, only in the event that said street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible, or when the operator is in possession of a written permit for such travel, issued by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state

highway patrol for all other highways, or upon those streets of a municipality where such operation has been specifically so authorized by a duly enacted municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway, where such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately ninety degrees (90°) to the direction of the highway, at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the highway or road, and the operator shall yield the right of way to all oncoming traffic.

(3) No snowmobile shall be operated upon a public street or highway when permitted to do so by this act, unless equipped with at least one head lamp and one tail lamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street or highway when allowed to do so under the provisions of this act shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road, or highway, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted, shall not be required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971.

53-1019. Unlawful operation on streets and highways. It shall be unlawful for any person to drive or operate any snowmobile upon a public street or highway in any one or more of the following manners:

(1) At a rate of speed greater than provided by law for motor vehicles.

(2) While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

(3) In a careless or reckless manner so as to endanger the person or property of another, or to cause injury or damage to either.

(4) Without a lighted head and taillight between the hours of dusk and dawn.

(5) Operating a snowmobile, or permitting such operation, by any person who by reason of age or physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971.

53-1020. Other unlawful operation. No person while operating a snowmobile, shall use the same:

(1) For the purpose of driving, rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles

and may direct other persons to so manage or drive his livestock; provided further that the department of fish and game, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds or fur-bearing animals by the use of snowmobiles.

(2) To discharge a firearm from or upon a snowmobile.

(3) Regulation of snowmobile noise. (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler, in good working order and in constant operation, adequate to comply with the specifications required by the rules and regulations; provided, that the commission may in its discretion establish separate and different rules and regulations applicable to new snowmobiles sold after a date selected by the commission, which shall not be later than June 30, 1972. In any event, from and after June 30, 1972, no new snowmobile, except snowmobiles designed for competition purposes only, shall be sold, or offered for sale, unless such vehicle is certified by the manufacturer as being able to conform with the sound level limitation of not more than eighty-five (85) decibels on a scale "A" (dBA) at fifteen (15) feet. Sound-pressure levels in decibels shall be measured on "A" scale of a sound-level meter having characteristics defined by American standards association S1, 4-1966 "General Purpose Sound Meter." Measurements shall be made in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" used by the international snowmobile industry association (January, 1969), or with such other standards for measurement of sound level as the commission may adopt.

(b) After a date selected by the commission, but not later than June 30, 1972, no new snowmobile not equipped with noise-suppression devices adequate to comply with the specifications required by the rules and regulations of the commission or the specification set forth in the preceding paragraph, whichever are more restrictive, shall be sold or offered for sale unless a separate placard, identifying that such snowmobile is not so equipped, is conspicuously and permanently affixed thereto.

(c) This section does not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency having the authority to grant such consent; provided that total sound produced by such event shall not exceed the specifications required by the rules and regulations of the commission after the effective date of the rules and regulations, and provided, that in any event, from and after June 30, 1971, total sound produced by such event shall not exceed (50) decibels on scale "A" (dBA) at any point fifteen (15) feet or more outside the boundaries of the area designated for such event.

(4) Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks from operating snowmobiles thereon.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973.

Amendments

The 1973 amendment added the proviso to subdivision (1).

53-1021. Accidents involving snowmobiles. The owner or operator of a snowmobile which is involved in any accident, collision, or upset upon a public street or highway where personal injury occurs to any person, or where property damage exceeds one hundred dollars ($100), shall report the accident or occurrence to a state or local law-enforcement agency responsible for collecting reports of accidents involving motor vehicles.

History: En. Sec. 10, Ch. 434, L. 1971.

53-1022. Enforcement. The following persons may enforce the provisions of this act:

The enforcement officers employed by the state department of fish and game, with respect to violations relating to game animals or birds, discharging firearms, or mufflers.

The sheriffs of the respective counties, and the police officers of cities and towns, within their respective jurisdictions, and the state highway patrol, with respect to any violation of this act upon the public streets or highways.

History: En. Sec. 11, Ch. 434, L. 1971.

53-1023. Penalties. Violations of any section of this act shall be misdemeanors, and punishable by fine or imprisonment or both, as follows:

(1) For any violations occurring upon the public highways, as provided by law for such violations applying to persons owning or operating motor vehicles.

(2) As provided by law for driving, rallying or harassing game animals, game birds or fur-bearing animals of the state.

(3) For any other violation, as provided by law for misdemeanors.

History: En. Sec. 12, Ch. 434, L. 1971. **Repealing Clause**

Section 13 of Ch. 434, Laws 1971 read "Sections 53-1001 through 53-1011, R. C. M., 1947, are hereby repealed."

53-1024. Tax on snowmobiles—definitions. As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

a. "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

b. "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

c. "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile and entitled to the use or possession thereof.

History: En. Sec. 1, Ch. 435, L. 1971. **Title of Act**

An act providing for the display of tax-paid decals on every snowmobile operated

in the state of Montana; for the yearly issuance of such decals; for a change in the assessment date of snowmobiles; providing penalties for violation of this act; and amending section 84-406, R. C. M. 1947, and providing an effective date.

53-1025. Display of tax-paid decals on snowmobiles required—application and issuance. No snowmobile shall be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the state department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the department may require. Said application shall be signed by the county treasurer and transmitted by him to the department accompanied by a fee of two dollars ($2). All moneys collected from payment of such fees shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the state fish and game commission, with one dollar ($1) designated for use in enforcing the purposes of this act and one dollar ($1) designated for use in developing snowmobile facilities. Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically.

History: En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973.

Amendments

Chapter 391, Laws of 1973, substituted references to the department of revenue for references to the board of equalization throughout the section.

Chapter 494, Laws of 1973, made the same changes as did Chapter 391, and in addition inserted "or the county treasurer" near the beginning of the second sentence; substituted "county treasurer" for "owner" near the beginning of the third sentence; increased the fee for the decal from $1.00 to $2.00 at the end of the third sentence; inserted the fourth sentence; inserted "or county treasurer" near the beginning of the fifth sentence; and made minor changes in phraseology.

53-1025.1. Duplicate registration receipt or decal. In the event any registration receipt or decal shall be lost, mutilated or become illegible, the persons to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of one dollar ($1) to the county treasurer.

History: En. Sec. 2, Ch. 494, L. 1973.

Title of Act

An act to provide that the fee of two dollars ($2) for issuance of decals for snowmobiles shall be deposited with the state treasurer to the credit of the state fish and game commission; amending section 53-1025, R. C. M. 1947.

53-1026. Application to be made annually—operation permitted after application for decal. Application must be made to the board for the

issuance of tax-paid decals annually. Snowmobiles may be operated between January 1 and January 20 in each year without displaying the current year's decal on the condition that application therefor has been made.

History: En. Sec. 3, Ch. 435, L. 1971.

53-1027. Failure to display decal a misdemeanor—penalty. The failure to display a current tax-paid decal during the time provided in this act shall constitute a misdemeanor, punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50).

History: En. Sec. 4, Ch. 435, L. 1971.

53-1028. Officers authorized to enforce act. The fish and game commission, enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this act.

History: En. Sec. 5, Ch. 435, L. 1971.

53-1029. Issuance of dealer registration certificate. (1) A dealer registration certificate shall be issued in accordance with this act.

(2) Upon receipt of dealer application and payment of fees which will be five dollars ($5), the dealer shall be issued two (2) dealer snowmobile identification cards which will be carried by dealer or dealer's customer when operating or demonstrating dealer's snowmobiles.

(3) No bond will be required of the dealer.

(4) Additional dealer snowmobile identification cards may be purchased by the dealer for a fee of two dollars ($2).

History: En. Sec. 3, Ch 494, L. 1973.

TITLE 54—NARCOTIC DRUGS

Chapter 1. Dangerous Drug Act, 54-132 to 54-138.
3. Controlled substances, 54-301 to 54-327.

CHAPTER 1—DANGEROUS DRUG ACT

Section 54-132. Criminal sale of dangerous drugs.
54-133. Criminal possession of dangerous drugs.
54-134. Fraudulently obtaining dangerous drugs.
54-135. Altering labels on dangerous drugs.
54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
54-137. Alternative sentencing authority.
54-138. Jurisdiction.

54-101 to 54-128. Repealed.

Repeal

Sections 54-101 to 54-128 (Secs. 1 to 26, 28, 30, Ch. 176, L. 1937; Secs. 1 to 3, Ch. 146, L. 1941; Sec. 1, Ch. 12, L. 1949; Secs. 1, 2, Ch. 174, L. 1953; Secs. 1 to 7, Ch. 7, L. 1955; Sec. 1, Ch. 6, L. 1959), the Uniform Drug Act, was repealed by Sec. 14, Ch. 314, Laws 1969. For new law, see secs. 54-301 to 54-327.

54-129 to 54-131. Repealed.

Repeal

Sections 54-129 to 54-131 (Secs. 1 to 3, Ch. 314, L. 1969), relating to dangerous drugs, were repealed by Sec. 31, Ch. 412, Laws 1973. For new law, see secs. 54-301 to 54-327.

54-132. Criminal sale of dangerous drugs. (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act.

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 55 and once by Ch. 412. Neither amendatory act mentioned the other. Since Ch. 412 included the change made by Ch. 55, the compiler has used the text of Ch. 412 above.

NOTE.—The following states have enacted the Uniform Narcotic Drug Act: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

Title of Act

An act providing for regulation of the possession and sale of dangerous drugs in the state of Montana; defining dangerous drugs to include depressant, stimulant, hallucinogenic and narcotic drugs and defining certain words and phrases in connection therewith; defining who may lawfully sell and possess dangerous drugs; providing for the fraudulent obtaining of

dangerous drugs or the alteration of labels; providing for the enforcement of unlawful sale and possession; providing for the state board of pharmacy to regulate, license and supervise, and designate other dangerous drugs after proper notice and hearing; amending section 95-302, R. C. M. 1947, to exclude trial jurisdiction in the justices' courts in cases commenced under this act; repealing sections 27-724, 27-725, 54-101 through 54-128 inclusive, 94-35-123, 94-35-148, 94-35-199, R. C. M. 1947.

Amendments

Chapter 55, Laws of 1973, deleted from subsection (b) a second sentence reading "Any person of age twenty-one years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence"; and made a minor change in style.

Chapter 412, Laws of 1973, deleted "and does not come within the exceptions of section 3" from the end of subsection (a); and deleted from subsection (b) the same sentence deleted by Ch. 55.

Cross-References

Justices' court jurisdiction, sec. 95-302.

Information Insufficient

Information charging offense under this section was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. State ex rel. Offerdahl v. District Court, 156 M 432, 481 P 2d 338.

Nature of Drug

Evidence that victims hallucinated following ingestion of drugs furnished by defendant and described by him as "acid" established dangerous nature of drugs to support conviction, despite absence of proof of exact type of drug, and the possibility that hallucinations might have been flashback from previous trips did not necessarily create reasonable doubt. State v. Dunn, 155 M 319, 472 P 2d 288.

Possession Only

Trial court's instruction to jury that law implies knowledge that drug was a prohibited drug from mere possession of the drug was an incorrect statement of the law, confusing to the jury, and entitled defendant to new trial. State v. Anderson, — M —, 498 P 2d 295.

Repeal Pending Prosecution

Where defendant was charged with selling narcotics in violation of former section 54-102, and between date of commission of crime and time information was filed legislature repealed former section 54-102 and passed this section of Dangerous Drug Act, such repeal did not bar prosecution under former section since general statutory saving clause, section 43-514, operated to sustain jurisdiction of subject matter in district court. State ex rel. Huffman v. District Court, 154 M 201, 461 P 2d 847.

DECISIONS UNDER FORMER LAW

Dangerous Drug

Defendant was not entitled to have words "and none others" added at end of jury instructions defining dangerous drugs in words of statute. State v. Dunn, 155 M 319, 472 P 2d 288.

Deferred Imposition of Sentence

Evidence of sale of two pounds of hashish to three minors, one only 15 years old, was sufficient to overcome presumption of entitlement to deferred imposition of sentence. Campus v. State, 157 M 321, 483 P 2d 275.

The statutory presumption of entitlement to deferred imposition of sentence for persons under 21 convicted of a first violation may be overcome where the evidence is sufficient, but, the record itself must disclose the evidence; evidence may be contained within or without proof of the crime itself; aggravating circumstances should be substantial evidence beyond the simple facts of the prima facie case. Campus v. State, 157 M 321, 483 P 2d 275.

Conditioning deferred imposition of sentence on serving term of 30 days in county jail was within trial court's authority where 18-year-old defendant was convicted of sale of dangerous drugs. State ex rel. Woodbury v. District Court, — M —, 495 P 2d 1119, distinguishing State v. Drew, 158 M 214, 490 P 2d 230.

Hearsay statement and affidavits which accused defendant of prior dealings in drugs were not admissible in aggravation and mitigation hearing to overcome presumption that defendant was entitled to deferred imposition of sentence, where defendant had no opportunity to cross-examine affiants or even determine if they were known to him. State v. Harney, — M —, 499 P 2d 802.

54-133. Criminal possession of dangerous drugs. (a) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

(b) A person convicted of criminal possession of dangerous drugs, other than criminal possession of marihuana and its derivatives as hereinafter provided, shall be imprisoned by imprisonment in the state prison not to exceed five (5) years. Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed sixty (60) grams of marihuana, or one (1) gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is punishable by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year or in the state prison not to exceed three (3) years or by both such fine and imprisonment.

(c) A person of the age of twenty-one (21) years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court.

History: En. Sec. 5, ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973.

Amendments

The 1971 amendment inserted "other than criminal possession of marihuana and its derivatives as hereinafter provided" in the first sentence of subsection (b); added new second and third sentences to subsection (b); redesignated the former second sentence of subsection (b) as the first sentence of subsection (c); added the second sentence to subsection (c); and made minor changes in phraseology.

The 1973 amendment deleted "and does not come within the exceptions of section 3" from the end of subsection (a).

Effective Date

Section 2 of Ch. 228, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Constitutionality

This section is not unconstitutionally vague and uncertain due to its failure to require knowledge and intent in relation to possession of dangerous drugs since meaning of term "possession" has been so well defined that it cannot be considered ambiguous. State ex rel. Glantz v. District Court, 154 M 132, 461 P 2d 193.

Constructive Possession

Possession of airline baggage claim tag was constructive possession of contraband contained in suitcase. State v. Trowbridge, 157 M 527, 487 P 2d 530.

Deferred Sentence

Trial court improperly sentenced 21-year-old defendant to three years imprisonment for violation of this section where there was no evidence to overcome the statutory presumption that defendant was entitled to deferred sentence. State v. Simtob, 154 M 286, 462 P 2d 873.

Elements of Crime

Whether several ingredients besides amphetamine are present within a pill is immaterial in a prosecution under Dangerous Drug Act. State v. Hull, 158 M 6, 487 P 2d 1314.

Probable Cause for Arrest

Where relators were arrested and charged under this section, allegation that probable cause did not exist for their arrest without warrant was without merit in regard to three who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party arrested who was present on premises but did not live there, notwithstanding later finding of drugs on this party, since mere presence in place where search was made without further proof of probable cause was insufficient to justify arrest. State ex rel. Glantz v. District Court, 154 M 132, 461 P 2d 193.

Quantity in Possession

As the Dangerous Drug Act did not require proof of any specific quantity of a

dangerous drug in order to constitute violation, it was unnecessary for the jury to find that the defendant possessed an amphetamine pill in sufficient quantity to be dangerous. State v. Hull, 158 M 6, 487 P 2d 1314.

Sentencing

Under subsection (c), a defendant may not be sentenced to a term in jail; and at the termination of the time of deferment or stayed imposition, the sentencing statute (95-2207) authorizes the court to accept a plea withdrawal or to strike the verdict of guilty and order the charge dismissed. State v. Drew, 158 M 214, 490 P 2d 230.

Once the presumption provided for in subsection (c) has been found by the trial judge not to have been overcome, the court's discretion is limited by this act to defer the imposition of sentence as provided under subsection (2) of section 95-2206. State v. Drew, 158 M 214, 490 P 2d 230.

DECISIONS UNDER FORMER LAW

Exclusive Nature of Statute

Marijuana seized in private residence under search warrant issued by justice of peace was unlawfully seized and warrant was void since, under former section 54-112, only district judge could issue search warrant for narcotics and no search warrant could be issued to search private residence for narcotics. The provisions of former Uniform Drug Act were sole and exclusive provisions governing issuance of search warrants authorizing lawful search and seizure of narcotic drugs and state's contentions that statute applied only to in rem proceedings to seize and destroy contraband narcotics and did not apply to in personam proceedings against possessor which are governed by criminal code could not be sustained. State v. Langan, 151 M 558, 445 P 2d 565, accord, State v. Kurland, 151 M 569, 445 P 2d 570 (marijuana inadmissible in criminal prosecution for possession against social guest).

54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug by (a) fraud, deceit, misrepresentation or subterfuge; (b) falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess dangerous drugs; (c) the use of a forged, altered or fictitious prescription; (d) the use of a false name or a false address on a prescription or; (e) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969.

54-135. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to a package or receptacle containing a dangerous drug, or otherwise misrepresents the package containing a dangerous drug.

History: En. Sec. 7, Ch. 314, L. 1969.

54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. A person convicted of fraudulently obtaining dangerous drugs or altering the labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed six (6) months.

History: En. Sec. 8, Ch. 314, L. 1969.

54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs or altering labels on dangerous drugs, if he is shown to be an

excessive or habitual user of dangerous drugs either from the face of the record or by a presentence investigation, may in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than six (6) months nor more than two (2) years.

History: En. Sec. 9, Ch. 314, L. 1969.

54-138. Jurisdiction. The district court shall have exclusive trial jurisdiction over all prosecutions commenced under the Montana Dangerous Drug Act.

History: En. Sec. 10, Ch. 314, L. 1969.

CHAPTER 3—CONTROLLED SUBSTANCES

Section 54-301. Definitions.
54-302. Administration of act—scheduling and rescheduling of drugs—findings—deviations from federal schedules—substances excluded.
54-303. Use of names of drugs in schedules.
54-304. Criteria for placement of drug in Schedule I.
54-305. Specific dangerous drugs included in Schedule I.
54-306. Criteria for placement of drug in Schedule II.
54-307. Specific dangerous drugs included in Schedule II.
54-308. Criteria for placement of drug in Schedule III.
54-309. Specific dangerous drugs included in Schedule III.
54-310. Criteria for placement of drug in Schedule IV.
54-311. Specific dangerous drugs included in Schedule IV.
54-312. Criteria for placement of drug in Schedule V.
54-313. Specific dangerous drugs included in Schedule V.
54-314. Annual republication of schedules.
54-315. Rule to be promulgated by board—fees.
54-316. Annual registration required for manufacturer, distributor or dispenser—exceptions—inspection.
54-317. Manufacturers and distributors registered unless against public interest—factors considered—practitioners' authority—research with Schedule I drugs—federal registration.
54-318. Suspension or revocation of registration—grounds.
54-319. Procedure for denial, suspension, revocation or refusal to renew registration.
54-320. Records and inventories required.
54-321. Order forms for drugs in Schedules I and II.
54-322. Prescription and medical requirements for scheduled drugs.
54-323. Educational programs—research—information confidential—possession of drugs by researchers.
54-324. Continuation of proceedings under prior law—initial registration.
54-325. Prior orders and rules continued in effect.
54-326. Uniformity of construction.
54-327. Practitioner's failure to register as misdemeanor—penalty.

54-301. Definitions. As used in this act:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent), or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does

not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(4) "Dangerous drug" means a drug, substance or immediate precursor in Schedules I through V hereinafter set forth.

(5) "Counterfeit substance" means a dangerous drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number of device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(7) "Dispense' means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(10) "Distributor" means a person who distributes.

(11) "Drug" means:

(a) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts or accessories.

(12) "Immediate precursor" means a substance which the board of pharmacists has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except

that this term does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice, or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(14) "Marihuana" means all parts of the plant cannabis sativa l., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in clause (a), but not including the isoquinoline alkaloids, of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under section 2 [54-302] of this act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(17) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(18) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(19) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(22) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(24) The term "prescription" shall be given the meaning it has in section 66-1502 (n), R. C. M. 1947.

History: En. Sec. 1, Ch. 412, L. 1973.

Title of Act

An act to amend the Dangerous Drug Act, by adopting substantially the definitions, procedures, standards and schedules and the regulatory provisions of the uniform controlled substances act as recommended by the national conference of commissioners on uniform state laws; by excluding from such schedules non-narcotic drugs which may be lawfully sold over the counter without a prescription; by repealing sections 54-129, 54-130, 54-131, and 66-1504.1, R. C. M. 1947; amending sections 54-132 and 54-133, R. C. M. 1947, by deleting references to section 54-131, R. C. M. 1947; amending section 54-132 by deleting the provision regarding deferred imposition of sentence; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

54-302. Administration of act—scheduling and rescheduling of drugs—findings—deviations from federal schedules—substances excluded. (1) The board of pharmacists shall administer this act and may add drugs to or delete or reschedule all drugs enumerated in the schedules in section 5, 7, 9, 11, or 13 [54-305, 54-307, 54-309, 54-311, or 54-313] of this act, pursuant to the rule-making procedures of the Montana Administrative Procedure Act [82-4201 to 82-4225]. In making a determination regarding a drug, the board of pharmacists shall consider the following:

(a) the actual or relative potential for abuse;

(b) the scientific evidence of its pharmacological effect, if known;

(c) the state of current scientific knowledge regarding the drug;

(d) the history and current pattern of abuse;

(e) the scope, duration, and significance of abuse;

(f) the risk to the public health;

(g) the potential of the drug to produce psychic or physiological dependence liability; and

(h) whether the drug is an immediate precursor of a drug already controlled under this act.

(2) After considering the factors enumerated in subsection (1) the board of pharmacists shall make findings with respect thereto and if it finds the drug has a potential for abuse it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

(3) If the board of pharmacists designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board of pharmacists, the board of pharmacists shall similarly control the drug under this act after the expiration of thirty (30) days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug, unless within that thirty (30) day period, the board of pharmacists objects to inclusion, rescheduling, or deletion. In that case, the board of pharmacists shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board of pharmacists shall publish its decision, which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board of pharmacists, control under this act is stayed until the board of pharmacists publishes its decision.

(5) Authority to control under this section does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout or tobacco.

(6) The board shall exclude any non-narcotic drug from a schedule if such drug may, under the Federal Food, Drug, and Cosmetic Act and section 27-716 (a) (2) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973.

54-303. Use of names of drugs in schedules. The dangerous drugs listed or to be listed in the schedules in sections 5, 7, 9, 11 and 13 [54-305, 54-307, 54-309, 54-311 and 54-313] are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973.

54-304. Criteria for placement of drug in Schedule I. The board of pharmacists shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973.

54-305. Specific dangerous drugs included in Schedule I. (1) The dangerous drugs listed in this section are included in Schedule I.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphamethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrorphan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacylmorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone, phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and trimeperidine.

(3) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphinol, methyldesorphine, methylhydromorphine, morphine methylbromide, morphine methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon.

(4) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine, 5-methoxy-3,4-methylenedioxy amphetamine, 3,4,5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl-2,5-dimethoxyamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote, n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, 2,5-dimethoxyamphetamine.

History: En. Sec. 5, Ch. 412, L. 1973.

54-306. Criteria for placement of drug in Schedule II. The board of pharmacists shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973.

54-307. Specific dangerous drugs included in Schedule II. (1) The dangerous drugs listed in this section are included in Schedule II.

(2) Any of the following drugs, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(3) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: alphaprodine, anileridine, bezitramide, dihydrocodeine, diphenoxylate, fentanyl, isomethadone, levomethorphan, levorphanol, metazocine, methadone, methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane, moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid, pethidine, pethidine-intermediate-a, 4-cyano-1-methyl-4-phenylpiperidine, pethidine-intermediate-b, ethyl-4-phenylpiperidine-4-carboxylate, pethidine-intermediate-c, 1-methyl-4-phenylpiperidine-4-carboxylic acid, phenazocine, piminodine, racemethorphan, and racemorphan.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) any drug which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(d) methylphenidate.

History: En. Sec. 7, Ch. 412, L. 1973.

54-308. Criteria for placement of drug in Schedule III. The board of pharmacists shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973.

54-309. Specific dangerous drugs included in Schedule III. (1) The dangerous drugs listed in this section are included in Schedule III.

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system:

(a) any drug which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) phencyclidine;

(h) sulfondiethylmethane;

(i) sulfonethylmethane; and

(j) sulfonmethane.

(3) Nalorphine.

(4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than three hundred (300) milligrams of dihydrocodeinone, or any if its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than one and eight tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(g) not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(h) not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) The board of pharmacists may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in subsections (2) and (3) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973.

54-310. Criteria for placement of drug in Schedule IV. The board of pharmacists shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: En. Sec. 10, Ch. 412, L. 1973.

54-311. Specific dangerous drugs included in Schedule IV. (1) The dangerous drugs listed in this section are included in Schedule IV.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital.

(3) The board of pharmacists may except by rule any compound, mixture, or preparation containing any depressant drug listed in sub-

section (2) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973.

54-312. Criteria for placement of drug in Schedule V. The board of pharmacists shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973.

54-313. Specific dangerous drugs included in Schedule V. (1) The dangerous drugs listed in this section are included in Schedule V.

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(b) not more than two and five tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

History: En. Sec. 13, Ch. 412, L. 1973.

54-314. Annual republication of schedules. The board of pharmacists shall revise and republish the schedules of dangerous drugs annually.

History: En. Sec. 14, Ch. 412, L. 1973.

54-315. Rules to be promulgated by board—fees. The board of pharmacists shall promulgate rules for its administration which are not inconsistent with this act and specifically shall levy and collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state; provided, however, the maximum fee for any registration shall not exceed one hundred dollars ($100) per year.

History: En. Sec. 15, Ch. 412, L. 1973.

54-316. Annual registration required for manufacturer, distributor or dispenser—exceptions—inspection. (1) Every person who manu-

factures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the board of pharmacists in accordance with its rules.

(2) Persons registered by the board of pharmacists under this act to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this act.

(3) The following persons need not register and may lawfully possess dangerous drugs under this act:

(a) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(b) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(c) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(d) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

(4) The board of pharmacists may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

(6) The board of pharmacists may inspect the establishment of a registrant or applicant for registration.

History: En. Sec. 16, Ch. 412, L. 1973.

54-317. Manufacturers and distributors registered unless against public interest — factors considered — practitioners' authority — research with Schedule I drugs—federal registration. (1) The board of pharmacists shall register an applicant to manufacture or distribute dangerous drugs included in sections 5, 7, 9, 11, and 13 [54-305, 54-307, 54-309, 54-311 and 54-313] unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board of pharmacists shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs, and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this act;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

(3) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board of pharmacists need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this act in another capacity. Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board of pharmacists evidence of that federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

History: En. Sec. 17, Ch. 412, L. 1973.

54-318. Suspension or revocation of registration—grounds. (1) A registration under section 16 [54-316] to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board of pharmacists upon a finding that the registrant:

(a) has furnished false or fraudulent material information in any application filed under this act;

(b) has been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board of pharmacists may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board of pharmacists suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board of pharmacists shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973.

54-319. Procedure for denial, suspension, revocation or refusal to renew registration. (1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board of pharmacists shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board of pharmacists at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The board of pharmacists may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 17 [54-317] or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board of pharmacists or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973.

54-320. Records and inventories required. Persons registered to manufacture, distribute, or dispense dangerous drugs under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board of pharmacists issues.

History: En. Sec. 20, Ch. 412, L. 1973.

54-321. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section, unless the board of pharmacists prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973.

54-322. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board of pharmacists, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 19 [54-319]. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug and cosmetic acts shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

History: En. Sec. 22, Ch. 412, L. 1973.

54-323. Educational programs—research—information confidential—possession of drugs by researchers. (1) The board of pharmacists shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs. In connection with these programs it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

(2) The board of pharmacists shall encourage research on misuse and abuse of dangerous drugs. In connection with the research, and in furtherance of the enforcement of this act, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of dangerous drugs; and

(c) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board of pharmacists may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board of pharmacists may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973.

54-324. Continuation of proceedings under prior law—initial registration. (1) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act.

(2) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(3) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any drug controlled under prior law which is not listed within Schedules I through V is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(4) The board of pharmacists shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any dangerous drug prior to the effective date of this act and who are registered or licensed by the state.

(5) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

History: En. Sec. 25, Ch. 412, L. 1973.

54-325. Prior orders and rules continued in effect. Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

History: En. Sec. 27, Ch. 412, L. 1973.

54-326. Uniformity of construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law

with respect to the subject of this act among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973.

54-327. Practitioner's failure to register as misdemeanor—penalty. Practitioners who fail or refuse to register as required by this act, shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed one thousand dollars ($1,000) or imprisoned in the county jail not to exceed one (1) year, or both.

History: En. Sec. 29, Ch. 412, L. 1973.

Separability Clause

Section 30 of Ch. 412, Laws 1973 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Repealing Clauses

Section 31 of Ch. 412, Laws 1973 read "The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act: sections 54-129, 54-130, 54-131 and 66-1504.1, R. C. M. 1947."

Section 32 of Ch. 412, Laws 1973 repealed all acts and parts of acts in conflict therewith.

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) **Repealed.**

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597, R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

REVISED CODES OF MONTANA

VOLUME 4
Part 1
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF SECOND REPLACEMENT VOLUME 4 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPLEMENTING SECOND REPLACEMENT VOLUME 4 (PART 1) THROUGH VOLUME 504 PACIFIC REPORTER (2ND SERIES)

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

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For Index See Pocket Supplement to Replacement Volume 9

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CHAPTER 2—EXECUTIVE OFFICERS—CLASSIFICATION AND ELECTION

Section
59-203. Certain officers, how elected.

59-203. (111) **Certain officers, how elected.** The mode of election of the governor, lieutenant-governor, secretary of state, state auditor, attorney general and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R. C. M. 1921; amd. Sec. 22, Ch. 100, L. 1973. Cal. Pol. C. Sec. 348.

Amendments

The 1973 amendment deleted "state treasurer."

CHAPTER 3—DISQUALIFICATIONS AND RESTRICTIONS

Section
59-301. Age and citizenship.

59-301. (410) **Age and citizenship.** No person is eligible to hold civil office in this state, who at the time of his election or appointment is not of the age of eighteen (18) years or older and a citizen of this state.

History: En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R. C. M. 1921; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973. Cal. Pol. C. Sec. 841.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 9, and once by Ch. 94. Neither amendatory act mentioned the other, but Ch. 9 incorporated the only change made by Ch. 94. Since the amendments do not appear to conflict, the compiler has used the language of Ch. 9, which embodies the changes made by both amendments.

Amendments

The 1971 amendment lowered the age requirement from 21 to 19 years.

Chapter 9, Laws of 1973, substituted "eligible to hold" for "capable of holding" near the beginning of the section; reduced the minimum age from nineteen to eighteen years; and inserted "or older" near the end of the section.

Chapter 94, Laws of 1973, reduced the minimum age from nineteen to eighteen years.

CHAPTER 4—APPOINTMENTS, NOMINATION AND OATH OF OFFICE

Section
59-413. Oath, form of.

59-413. (430) **Oath, form of.** Members of the legislative assembly and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test must be required as a qualification for any office or public trust.

History: Ap. p. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R. C. M. 1921; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973. Cal. Pol. C. Sec. 904.

Amendments

Chapter 7, Laws of 1973, deleted from the oath form the clauses "and that I have not paid or contributed, or promised to pay or contribute either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to my office other than the compensation allowed by law"; and made minor changes in style.

Chapter 100, Laws of 1973, deleted the same clauses as did Chapter 7.

59-414. (431) **Repealed.**

Repeal

Section 59-414 (Sec. 1011, Pol. C. 1895), relating to the taking of the oath by members of the legislature, was repealed by Sec. 6, Ch. 7, Laws 1973.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section
59-501. Certain officers and employees not to be interested in contracts.
59-538. Expenses of persons in state service—per diem allowance.
59-539. Computation of per diem allowance.

59-501. (444) **Certain officers and employees not to be interested in contracts.** Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof, must not be interested in any contract made by them in their official capacity, or by any body, agency, or board of which they are members or employees. In this section:

(1) The term "be interested in" does not include holding a minority interest in a corporation.

(2) The term "contract" does not include:

a. contracts awarded to the lowest responsible bidder based on competitive bidding procedures, or

b. merchandise sold to the highest bidder at public auctions, or

c. investments or deposits in financial institutions which are in the business of loaning or receiving money, or

d. contracts for professional services.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1973. Cal. Pol. C. Sec. 920.

Amendments

The 1973 amendment substituted "legislature" for "legislative assembly"; extended the first sentence to deputies and employees; inserted "agency" and "employees" in the final clause of the first sentence; and added the definitions.

59-514. (455.2) **Destruction of old county records, etc.**

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(p).

59-538. Expenses of persons in state service—per diem allowance. Every person engaged in any service in every department of state, except the governor, the lieutenant governor, and the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of the supreme court and justices of the supreme court who shall be paid actual and necessary expenses as hereinafter provided exclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, sixteen dollars ($16) per day for such travel within the state of Montana, and for travel outside the state of Montana the sum of twenty-five dollars ($25) per day for meals and other necessary expenses; except that for travel within the District of Columbia the sum of thirty dollars ($30) per day shall be allowed and provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310. The governor shall be authorized actual and necessary expenses not to exceed sixty dollars ($60) per day when engaged in state service away from Helena, Montana. The lieutenant governor, when directed by the governor to engage in state service, the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of supreme court and justices of supreme court shall be authorized actual and necessary expenses not to exceed forty dollars ($40) per day while engaged in state service away from Helena, Montana.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973.

Amendments

Chapter 10, Laws of 1971, inserted before the first proviso the exception relating to travel in the District of Columbia.

Chapter 295, Laws of 1971, inserted "the lieutenant governor" near the beginning of the first sentence; deleted a former third proviso excepting elective state officers; added "when engaged in state service away from Helena, Montana" to the end of the second sentence; inserted "The lieutenant governor, when directed by the governor to engage in state service" at the beginning of the third sentence; and inserted "Helena" at the end of the third sentence.

The 1973 amendment increased the per diem for travel within the state from $13.50 to $16.00; and increased the per diem for travel outside the state from $22.50 to $25.00.

59-539. Computation of per diem allowance. In computing the per diem in lieu of subsistence for continuous travel of more than twenty-four (24) hours, the calendar day, midnight to midnight, shall be the unit, and for fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one-fourth (¼) of the rate for a calendar day shall be allowed for each period of six (6) hours or fraction thereof. When a change in the per diem rate is made during a day, the rate of per diem in effect at the beginning of the quarter in which the change occurs shall continue to the end of such quarter. For continuous travel of twenty-four (24) hours or less, constituting a travel period, such period shall be regarded as commencing with the beginning of the travel and ending with the completion thereof, and for each six (6) hour portion of the period or fraction thereof one-fourth (¼) of the rate for a calendar day shall be allowed; provided, however, that no per diem, excepting an allowance not to exceed two dollars ($2) per day for moneys actually expended for mid-day meals, shall be allowed when the departure is at or after 8:00 a. m. and the return on the same day is at or prior to 6:00 p. m. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973.

Amendments

The 1973 amendment increased the allowance per day for mid-day meals from $1.25 to $2.00, near the end of the first sentence.

CHAPTER 6—RESIGNATIONS AND VACANCIES

Section
59-605. Vacancies, how filled when not otherwise provided for—recess appointments.
59-609. Elective officer's inability to perform—filling vacancy.

59-605. (514) **Vacancies, how filled when not otherwise provided for—recess appointments.** (1) When any office becomes vacant, and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one (1) house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R. C. M. 1921; amd. Sec. 1, Ch. 388, L. 1973. Cal. Pol. C. Sec. 999.

Amendments

The 1973 amendment designated the entire former section as subsection (1); substituted "appointing a qualified person

to fill the unexpired term of the person whose office became vacant" for "granting a commission, to expire at the end of the next legislative assembly or at the next election by the people" at the end of subsection (1); added subsection (2); and made minor changes in style.

Repealing Clause

Section 2 of Ch. 388, Laws 1973 read "Section 59-606, R. C. M. 1947, is repealed."

59-606. (515) Repealed.

Repeal

Section 59-606 (Sec. 1105, Pol. C. 1895), relating to vacancies occurring during a recess of the legislature, was repealed by Sec. 2, Ch. 388, Laws 1973. For new law, see sec. 59-605.

59-609. Elective officer's inability to perform—filling vacancy. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature, that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists, or it may defer such determination to the next regular session of the legislature.

(3) If the legislature, within twenty-one (21) days after convening, whether in regular or special session, determines by two-thirds (2/3) vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of the state of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

History: En. Sec. 1, Ch. 343, L. 1973.

Title of Act

An act to provide a method to determine permanent disability of executive officers to implement article VI, section 6(2) of the 1972 Montana constitution.

CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS

Section
59-701.1. Reappropriation of valid obligations at end of each fiscal year.
59-701.2. Obligations at fiscal year end shall be encumbered.

59-701.1. Reappropriation of valid obligations at end of each fiscal year. Purchase orders issued and accrued expenses approved by the state controller shall be encumbered at the end of each fiscal year in the state controller's accounts, and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971.

Amendments

The 1971 amendment revised and reworded the section.

59-701.2. Obligations at fiscal year end shall be encumbered. Any valid obligation not paid within the fiscal year shall be encumbered for payment thereof at the end of each fiscal year in the state controller's accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created, except construction contracts, which upon approval of the state controller, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971.

Amendments

The 1971 amendment completely rewrote the section. For previous text, see parent volume.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section
59-801. Mileage of all officers.
59-802. Mileage of all officers—liability of approving board for exceeding authorized amount.

59-801. (4884) **Mileage of all officers.** Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of twelve cents (12¢) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per mile by the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933; amd Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973.

Amendments

The 1973 amendment increased the automobile mileage rate from nine cents to twelve cents; and substituted "per mile by the shortest regularly traveled automobile route when travel is by private plane" for "per air mile for the distance actually traveled by airplane."

59-802. (4884.1) **Mileage of all officers—liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive twelve cents (12¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per mile by the shortest regularly traveled automobile route

when travel is by private plane, and no more unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2, Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L. 1947; amd. Sec. 2, Ch. 93, L. 1949; amd. Sec. 2, Ch. 124, L. 1951; amd. Sec. 2, Ch. 106, L. 1961; amd. Sec. 2, Ch. 123, L. 1963; amd. Sec. 3, Ch. 48, L. 1967; amd. Sec. 2, Ch. 495, L. 1973.

Amendments

The 1973 amendment increased the automobile mileage rate from nine cents to twelve cents; substituted "per mile by the shortest regularly traveled automobile route when travel is by private plane" for "per air mile for each mile necessarily traveled by airplane"; and inserted "and no more" before "unless otherwise specifically provided by law."

CHAPTER 9—CLASSIFICATION AND COMPENSATION OF STATE EMPLOYEES

Section
59-903. Definitions.
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59-905. Personnel classification plan—development.
59-906. Guidelines for classification.
59-907. Review of positions—changes in classification.
59-908. List of positions maintained—contents.
59-909. Determination of number and classes of employees in each agency—submission to governor.
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59-913. Functions and duties of department—delegation of authority—policies.
59-914. Merit system continued.

59-901, 59-902. Repealed.

Repeal

Sections 59-901 and 59-902 (Secs. 1, 2, Ch. 30, L. 1943; Sec. 2, Ch. 176, L. 1949; Sec. 17, Ch. 251, L. 1953), authorizing the state board of examiners to fix the number, salaries and terms of assistants to state officers, were repealed by Sec. 3, Ch. 272, Laws 1971. Sec. 6, Ch. 272, Laws 1971 provided that repeal be effective upon the date the governor signs an executive order implementing chapter 2 of Title 82A, or on December 31, 1972, whichever occurs first. Executive Reorganization Order 4-71, signed by the Governor and effective on August 20, 1971, accomplished that purpose.

59-903. Definitions. For the purposes of this act:

(1) "Agency" means any department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(2) "Department" means the department of administration.

(3) "Program" means a combination of planned efforts to provide a service.

(4) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

History: En. Sec. 1, Ch. 440, L. 1973.

Title of Act

An act to provide that the department of administration shall develop a wage and salary plan for state employees for submission to the 1975 legislature and be granted immediate authority to develop a personnel classification plan; providing that salary increases, changes in position

classifications and changes in number of employees must be approved by the department of administration; and creating a board for the hearing of grievances that result from the implementation of this act.

59-904. Officers excepted from provisions of act. This act does not apply to the following positions in state government:

(1) elected officials;

(2) officers of the legislative branch;

(3) judges of the judicial branch;

(4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic personnel under the authority of the board of regents of higher education.

History: En. Sec. 2, Ch. 440, L. 1973.

59-905. Personnel classification plan—development. The department shall develop a personnel classification plan for all state positions and classes of positions in state service, following hearings involving affected employees and employee organizations, except those exempt in section 2 [59-904] of this act.

History: En. Sec. 3, Ch. 440, L. 1973.

59-906. Guidelines for classification. (1) In providing for the classification plan the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

(a) similar qualifications of education, experience, knowledge, skill and ability can be required of applicants for each position in the class;

(b) the same title can be used to identify each position in the class;

(c) similar pay may be provided, under the same conditions, with equity to each position within the class.

(2) A class may consist of only one (1) position.

History: En. Sec. 4, Ch. 440, L. 1973.

59-907. Review of positions—change in classification. The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities; provided, however, employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

History: En. Sec. 5, Ch. 440, L. 1973.

Temporary Provisions

Section 6 of Ch. 440, Laws 1973 read "The department shall develop a wage and salary plan for presentation to the 1975 legislature. If adopted by the 1975 legislature, the wage and salary plan shall be integrated with the personnel classification plan to ensure that positions within classes are paid at similar rates of pay after considering different rates of pay that may result from merit increases and years of state service."

Section 7 of Ch. 440, Laws 1973 read "In developing the wage and salary plan the department shall consider all factors, including the results of meetings with employees and employee organizations, that are necessary to ensure that the plan

will continuously enable the state service to attract and retain an adequate number of professional, technical and administrative personnel."

Section 8 of Ch. 440, Laws 1973 read "The wage and salary plan shall not decrease the current wage or salary or the value of fringe benefits provided by law to an employee in the state service before the adoption of the plan."

59-908. List of positions maintained—contents. To facilitate state budgeting, and as directed by the department, each agency shall maintain a list of current authorized positions, the number of positions in each class and the salaries or wages being paid, appropriated or proposed for each class.

History: En. Sec. 9, Ch. 440, L. 1973.

59-909. Determination of number and classes of employees in each agency—submission to governor. Based on documentation to be submitted by each agency, the department shall determine the number and classes of positions or number of employees of each agency or program thereof and submit the determinations to the governor for approval or amendment before the beginning of each fiscal year. At any time, upon request of the agency, the department may, with the approval of the governor, amend the number and classes of positions or number of employees in any agency or program thereof. This section does not limit legislative authority to amend the determinations of the department.

History: En. Sec. 10, Ch. 440, L. 1973.

59-910. Department authorization for increase of salary or wage of class. An agency may not increase the salary or wage of any class of positions without authorization of the department.

History: En. Sec. 11, Ch. 440, L. 1973.

59-911. Department authorization for increase in number and class of positions of agency. An agency may not increase the number and class of positions under its authority without the authorization of the department.

History: En. Sec. 12, Ch. 440, L. 1973.

59-912. No limitation on legislative authority. This act does not limit the authority of the legislature relative to appropriations for salary and wages; and the department shall adjust its determinations in accordance with legislative appropriations.

History: En. Sec. 13, Ch. 440, L. 1973.

59-913. Functions and duties of department—delegation of authority—policies. (1) The department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state, and make available the facilities of the department to this end;

(b) foster and develop programs for the improvement of employee effectiveness including training, safety, health, counseling and welfare;

(c) investigate from time to time the operation and effect of this act and the policies made thereunder and report the findings and recommendations to the governor;

(d) establish policies, procedures and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out this act and the policies thereunder, and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of this act.

(2) The department may delegate authority granted to it under this chapter to agencies in the state service that effectively demonstrate the ability to carry out the provisions of this act, provided that such agencies remain in compliance with policies, procedures, time tables and standards established by the department.

(3) The department shall issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

History: En. Sec. 14, Ch. 440, L. 1973.

59-914. Merit system continued. The merit system, established in 1940 by certain state agencies of state government, as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

History: En. Sec. 16, Ch. 440, L. 1973.

Separability Clause

Section 17 of Ch. 440, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

CHAPTER 10—LEAVES OF ABSENCE OF EMPLOYEES

Section
59-1001. Annual vacation leave.
59-1002. Accumulation of leave.
59-1003. Separation from service or transfer to other department—cash for unused vacation leave upon termination.
59-1005. Absence because of illness not chargeable against vacation unless approved by employee.
59-1007.1. Definitions.
59-1008. Sick leave.
59-1009. Observance of holiday falling on an employee's day off.
59-1010. Jury duty—service as witness.

59-1001. Annual vacation leave. (1) Each full-time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment. For calculating vacation leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of twelve (12) calendar months. Persons regularly employed nine (9) or more months each year, but whose continuous employment is interrupted by the seasonal nature

of the position, shall earn vacation credits. However, such persons must be employed twelve (12) qualifying months before they can use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service. Vacation leave credits shall be earned in accordance with the following schedule:

(a) from one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;

(b) after ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;

(c) after fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;

(d) after twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.

Permanent part-time employees are entitled to prorated annual vacation benefits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period and have worked the qualifying period.

(2) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law. Should a question arise under this paragraph, it shall be submitted to arbitration as provided in chapter 201, Title 93, R.C.M., 1947 unless there is a collective bargaining agreement applicable.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 360 and once by Ch. 476. Neither amendatory act mentioned the other. The compiler has made a composite section embodying the nonconflicting changes made by both amendments. In so far as the two amendments may conflict in the wording of subdivision (1) (a), the compiler has used the language of Ch. 476, the later of the two in time of approval.

Amendments

The 1971 amendment deleted "for a period of one (1) year from the date of employment" before "is entitled to" in the first sentence; substituted "shall earn annual vacation leave credit from the first full calendar month of employment" at the end of the first sentence for "shall be granted annual vacation leave with full pay"; inserted the present fourth sentence; substituted "one (1) month through" at the beginning of subdivision (a) for "one (1) year to"; substituted "eleven (11) years through" at the beginning of subdivision (b) for "ten (10) years to"; substituted "sixteen (16) years through" at the beginning of subdivision (c) for "fifteen (15) years to"; and made minor changes in phraseology.

Chapter 360, Laws of 1973, substituted "the first full pay period" for "one (1) month" in subdivision (1) (a); and added subsection (2).

Chapter 476, Laws of 1973, inserted "full-time" before "employee" near the beginning of subsection (1); deleted "who is in continuous employment and service of the state, county or city thereof" before "is entitled" in the first sentence of subsection (1); substituted "pay period of employment" at the end of the first sentence of subsection (1) for "calendar month of employment"; inserted the second and third sentences in subsection (1); substituted "vacation leave with pay" in the fourth sentence of subsection (1) for "leave with full pay"; inserted the fifth, sixth and seventh sentences in subsection (1); substituted "one (1) full pay period" near the beginning of subdivision (1) (a) for "one (1) month"; converted the vacation leave credit statements in the lettered subdivisions of subsection (1) from monthly to annual allowances; substituted "after ten (10) years" at the beginning of subdivision (1) (b) for "from eleven (11) years"; substituted "after fifteen (15) years" at the beginning of subdivision (1) (c) for "from sixteen (16) years"; added the final paragraph of subsection (1); and made minor changes in phraseology and style.

59-1002. Accumulation of leave. Annual vacation leave may be accumulated to a total not to exceed thirty (30) working days as of the last day of any calendar year.

History: En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971.

Amendments

The 1971 amendment added "as of the last day of any calendar year" at the end of the section.

Effective Date

Section 3 of Ch. 121, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

59-1003. Separation from service or transfer to other department—cash for unused vacation leave upon termination. An employee who terminates his employment with the state, or any county or city thereof, for reason not reflecting discredit on himself, shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above. However, if an employee transfers between agencies of the same state, county or city jurisdiction there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

History: En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973.

Amendments

The 1973 amendment substituted "who terminates his employment with" for "who is separated from the service of" near the beginning of the first sentence; deleted "or any employee transferred to or employed in another division or department of the state, or any county or city thereof" following "for reason not reflecting discredit on himself" in the first sentence; substituted "termination" for "separation from" in the middle of the first sentence; deleted "transfer to or acceptance of new employment within the state, county, or city service" following "termination" in the middle of the first sentence; added "assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above" to the end of the first sentence; and added the second and third sentences.

59-1005. Absence because of illness not chargeable against vacation unless approved by employee. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973.

Amendments

The 1973 amendment substituted "unused vacation leave credits" for "annual vacation leave"; and added "unless approved by the employee."

59-1007.1. Definitions. For the purpose of this act:

(1) "Agency" means any legally constituted department, board or commission of state, county or city government.

(2) "Employee" means any person employed by the state, county or city governments.

(3) "Permanent employee" means an employee who regularly works for more than six (6) months in any twelve (12) month period.

(4) "Part-time employee" means an employee who normally works less than forty (40) hours a week.

(5) "Full-time employee" means an employee who normally works forty (40) hours a week.

(6) "Temporary position" means a position created for a definite period of time but not to exceed six (6) months and the position is not renewable.

(7) "Seasonal position" means a position which, although temporary in nature, regularly occurs from season to season or from year to year.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than five (5) working days.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than five (5) working days or without a continuous absence without pay of more than fifteen (15) working days.

(12) "Break in service" means that period of time an employee takes to change employment from one agency to employment in another agency of the same jurisdiction.

History: En. Sec. 1, Ch. 476, L. 1973.

Title of Act

An act to amend sections 59-1001, 59-1003, 59-1005 and 59-1008, R. C. M. 1947; to provide laws for administering annual vacation and sick leave benefits for all employees of state, county and city governments; and to add a new section to provide for jury leave for public employees.

59-1008. Sick leave. (1) Each full-time employee of the state, or of any county or city thereof, is entitled to and shall earn sick leave credits from the first full pay period of employment. For calculating sick leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate sick leave credits shall be earned and credited at the end of each pay period. Sick leave credits shall be earned at the rate of twelve (12) working days for each year of service without restriction as to the number of working days he may accumulate.

(2) An employee may not accrue sick leave credits during a continuous leave of absence without pay, which exceeds fifteen (15) calendar days. Employees are not entitled to be paid for sick leave under the provisions of this act until they have been continuously employed for ninety (90) days. Upon completion of the qualifying period, the employee is entitled to the sick leave credits he has earned.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have a regularly scheduled work assignment, and normally work at least twenty (20) hours each week of the pay period, and have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates his employment with the state or of any county or city thereof, is entitled to a lump-sum payment equal to one-fourth (¼) of the pay attributed to his accumulated sick leave. The pay attributed to his accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time the sick leave credits were earned. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971, and the payment therefor, shall be the responsibility of the state, or any county or city thereof, wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same state, county or city jurisdiction he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee of the state or any county or city thereof who receives a lump-sum payment pursuant to this act and who is again employed by the state or a county or city thereof shall not be credited with any sick leave for which he has previously been compensated.

(7) The department of administration of the state of Montana or the administrative office of any county or city thereof shall be responsible for the proper administration of sick leave and shall promulgate such rules and regulations as it deems necessary to achieve the uniform administration of sick leave and to prevent the abuse thereof. When promulgated these rules and regulations are effective as to all employees of the state of Montana or any county or city thereof.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this act.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973.

Title of Act

An act adding new section 59-1008, R. C. M. 1947, to provide uniform sick leave benefits for public employees.

Amendments

The 1973 amendment inserted "full-time" before "employee" at the beginning of subsection (1); substituted "is entitled to and shall earn sick leave credits" in the first sentence of subsection (1) for "shall be granted sick leave with full pay"; added "from the first full pay period of employment" to the end of the first sentence of subsection (1); inserted new second and third sentences in subsection (1); converted the sick leave allowance stated in the fourth sentence of subsection (1) from a monthly to an annual allowance; inserted "continuous" before "leave of absence" in the first sentence of subsection (2); inserted "calendar" before "days" at the end of the first sentence of subsection (2); inserted new subsections (3) and (4); renumbered subsections (3), (4), (5) and (6) as (5), (6), (7) and (8); substituted "An employee who terminates his employment" at the beginning of subsection (5) for "Upon separation from service"; substituted "July 1, 1971" in the third sentence of subsection (5) for "when this act becomes effective"; substituted "had accrued prior to July 1, 1971" at the end of the fourth sentence of subsection (5) for "has previously accrued"; added the fifth and sixth sentences to subsection (5); inserted "the administrative office" before "of any county or city" in the first sentence of subsection (7); and made numerous minor changes in phraseology.

59-1009. Observance of holiday falling on an employee's day off. Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal

holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

History: En. Sec. 1, Ch. 108, L. 1971.

Title of Act

An act to provide for holiday observance by public employees when a holiday falls on the employee's day off.

59-1010. Jury duty—service as witness. (1) Each employee of the state, or any county or city thereof, who is under proper summons, shall be granted leave without pay to serve as a juror in a court or judicial proceedings without loss of cumulative benefits.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

(4) The department of administration of the state of Montana or the administrative office of any city or county thereof shall issue the necessary regulations to implement this act.

History: En. Sec. 6, Ch. 476, L. 1973.

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

Section
59-1109. Supplementation of social security benefits.
59-1110. Eligibility of staff and teachers—payroll deductions.

59-1105. Contribution account.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(d).

59-1109. Supplementation of social security benefits. Any school district of the state, may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of such board of trustees. If the majority of votes cast in any such referendum indicates that said staff and teachers approve, then such board of trustees shall certify to the state department of revenue (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage) that the conditions

for coverage by social security, required by section 218 of the Social Security Act have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

59-1110. Eligibility of staff and teachers—payroll deductions. Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state department of revenue, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any state funds received for school support by any school district, high school district or county high school, and shall first be paid therefrom.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first sentence.

59-1111. For purposes of act, each state institution, etc.

Cross-References

Board of regents to exercise powers and duties, sec. 75-5617 (2).

CHAPTER 13—FACSIMILE SIGNATURES OF PUBLIC OFFICIALS

59-1301. Definitions.

Facsimile Signatures of Public Officials Act

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the "Uniform Facsimile Signatures of Public Officials Act": Colorado, Florida, Kansas, North Dakota, Rhode Island and Washington.

CHAPTER 14—MONTANA SALARY COMMISSION

Section
59-1401. Creation of commission—composition—terms—vacancies.
59-1402. Meetings of commission—quorum—compensation.
59-1403. Commission studies.
59-1404. Commission recommendations—submission.

59-1401. Creation of commission—composition—terms—vacancies. (1) There is created a Montana salary commission. The commission is composed of eight (8) members, none of whom may be public officers, either

elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(a) First, the governor shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(b) Next, the supreme court shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(c) Next, the majority floor leader of the senate shall appoint one (1) member from his political party. The minority leader of the senate shall then appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the presiding officer;

(d) Next, the presiding speaker of the house of representatives shall appoint one (1) member from his political party. Lastly, the minority leader in the house of representatives shall appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the speaker.

All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of four (4) years, provided that one-half (½) of the membership of the first salary commission shall serve a term of two (2) years, and the committee members shall draw lots at their first meeting to determine which of their number will serve two (2) year terms. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 1, Ch. 66, L. 1973.

Title of Act

An act to create the Montana salary commission, to comply with article XIII, section 3 of the 1972 Montana constitution and providing an effective date.

59-1402. Meetings of commission—quorum—compensation. (1) The initial meeting of the commission shall be held on the second Tuesday of July in the year in which the commission is created.

(2) The commission shall hold at least two (2) meetings before any legislative session which may consider appropriations for compensation including salaries and expenses of the judiciary and elective members of the legislative and executive branches.

(3) All subsequent meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least twenty (20) days before the day scheduled for the meeting.

(4) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(5) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their actual and necessary ex-

penses incurred, and twenty-five dollars ($25) per day while attending meetings of the commission.

(6) The commission shall choose one (1) of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

History: En. Sec. 2, Ch. 66, L. 1973.

59-1403. Commission studies. The commission may request comprehensive reports or studies from any state agency concerning compensation of the judiciary and elective members of the legislative and executive branches of government. Any state agency from which such a report is requested shall furnish the same within a reasonable time as determined by the chairman and the head of the agency concerned. The report or study requested, in addition to such other matters as the commission may request, or the agency preparing the report may determine appropriate, shall contain a review and comparison of the levels and form of compensation paid to the judiciary and elective members of the legislative and executive branches with the levels and forms of compensation paid in other states similarly situated.

History: En. Sec. 3, Ch. 66, L. 1973.

59-1404. Commission recommendations—submission. On or before November 15 prior to the year in which the legislature may consider appropriations for compensation of members of the judiciary and elective members of the legislative and executive branches, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislative assembly, to each member of the judiciary, and each elective member of the executive branch, for review and consideration. A commission member who does not concur in the proposed recommendation may submit his written objections thereto with the formal recommendations submitted by the commission.

History: En. Sec. 4, Ch. 66, L. 1973.

Effective Date

Section 5 of Ch. 66, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

CHAPTER 15—STATE EMPLOYEE GROUP INSURANCE

Section

59-1501. Definitions.
59-1502. Negotiation and contracting by department of administration.
59-1503. Advisory council—selection of representatives—meetings.
59-1504. Combining existing employee groups.
59-1505. Approval of insurance by component group—independent negotiation in event of disapproval.
59-1506. Rules.
59-1507. Costs of administration and negotiation.

59-1501. Definitions. As used in this act:

(1) "Department" means the department of administration of the state of Montana provided for in chapter 2 of Title 82A.

(2) "Employee" means an employee of the state of Montana eligible for insurance coverage pursuant to section 11-1024 and a member, officer, or employee of the legislative branch of state government. The term "employee" does not include employees of counties, cities, towns and school districts of the state of Montana.

History: En. Sec. 1, Ch. 438, L. 1973.

Title of Act

An act to provide for combining all state employees into one or more groups for purposes of negotiating and contracting for group insurance.

59-1502. Negotiation and contracting by department of administration. The department of administration shall negotiate and contract for all contracts of group insurance and health service corporation plans issued to all officers and employees of all departments of the executive and legislative branches of the government of the state of Montana.

History: En. Sec. 2, Ch. 438, L. 1973.

59-1503. Advisory council—selection of representatives—meetings. (1) Before the department begins negotiations for a group insurance policy, the director of the department shall create an advisory council to advise him on matters pertaining to the negotiating and contracting. The advisory council shall be created under section 82A-110, but the members shall be selected in accordance with subsection (2) of this section.

(2) The officers and employees of each principal department and constitutional office in the executive branch of state government and the members, officers, and employees of the legislative branch of state government shall select, in accordance with the rules adopted under section 6 [59-1506] of this act, a representative to serve on the advisory council and to represent the interests of the officers and employees.

(3) The advisory council shall meet quarterly to review the existing policy, to report and review claim problems and provide advice to the department for future negotiations.

History: En. Sec. 3, Ch. 438, L. 1973.

59-1504. Combining existing employee groups. The department may combine existing employee groups in one or more departments of the executive branch of the government of the state of Montana into a single group and contract on behalf of the combined group. The department may also combine all employees of the executive and legislative branches of the government of the state of Montana into one group.

History: En. Sec. 4, Ch. 438, L. 1973.

59-1505. Approval of insurance by component group—independent negotiation in event of disapproval. Two-thirds (2/3) of the members of any existing component employee group, which is part of the combined group on whose behalf the department has contracted for group

insurance, must approve the policy in order for it to be effective as to that component group. When the policy is approved, the employer contribution provided for in section 11-1024 shall then be paid to the insurer issuing the approved policy. The component employee group shall retain the power to negotiate and contract for group insurance and health service corporation plans if such component group does not approve the policy negotiated by the department.

History: En. Sec. 5, Ch. 438, L. 1973.

59-1506. Rules. The department is empowered to promulgate such rules as are required to carry out the purposes of this act.

History: En. Sec. 6, Ch. 438, L. 1973.

59-1507. Costs of administration and negotiation. The department's cost of negotiating and administering group insurance policies pursuant to this act are to be included as part of the premium paid and returned to the department by each insurer from the premiums it receives. All department costs of negotiating and administering group insurance policies are subject to the approval of the advisory council.

History: En. Sec. 7, Ch. 438, L. 1973.

CHAPTER 16—COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Section

59-1601. Policy.
59-1602. Definitions.
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59-1616. Administrative Procedure Act applied.

59-1601. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973.

Title of Act

An act granting public employers and public employees the right to bargain collectively; providing that the board of personnel appeals may designate labor organizations to be exclusive representative of employees in certain units; and may also call elections by employees for the same purpose; providing the board of personnel appeals shall establish remedies for unfair labor practices; and providing procedures for carrying out the act.

59-1602. Definitions. When used in this act:

(1) "public employer" means the state of Montana or any political subdivision thereof, including but not limited to, any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees;

(2) "public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection (3) and (4) below) or members or any state board or commission who serve the state intermittently, professional instructors, teachers, school district clerks and school administrators, and paraprofessional instructors employed by school boards and districts of this state, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(3) "supervisory employee" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(4) "management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;

(5) "labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment;

(6) "exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer;

(7) "board" means the board of personnel appeals provided for in section 82A-1014;

(8) "person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(9) "unfair labor practice" means any unfair labor practice listed in section 5 [59-1605];

(10) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of

whether the disputants stand the proximate relation of employer and employee;

(11) "appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

History: En. Sec. 2, Ch. 441, L. 1973.

59-1603. Employees' right to join or form labor organization and engage in collective bargaining activities. (1) Public employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.

(2) Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as but not limited to:

(a) direct employees;

(b) hire, promote, transfer, assign, and retain employees;

(c) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(d) maintain the efficiency of government operations;

(e) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(f) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(g) establish the methods and processes by which work is performed.

(3) Labor organizations designated in accordance with the provisions of this act are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

(4) Certification as an exclusive representative shall be extended or continued as the case may be only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as: provisions are made for democratic organization and procedures; elections are conducted pursuant to adequate standards and safeguards; controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and requirements exist for maintenance of sound accounting and fiscal controls including annual audits.

History: En. Sec. 3, Ch. 441, L. 1973.

59-1604. Duty to bargain collectively—good faith. The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain

collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (3) of section 5 [59-1605] of this act.

History: En. Sec. 4, Ch. 441, L. 1973.

59-1605. Unfair labor practices of employer or labor organization. (1) It is an unfair labor practice for a public employer to:

(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 3 [59-1603] of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section 12 (3), an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 3 [59-1603] of this act, or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973.

59-1606. Petition on representation matters—hearing—notice—election. (1) Whenever in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that thirty per cent (30%) of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative, or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit, the board or an agent of the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the board or an agent of the board finds that there is a question of representation, it shall direct an election by secret ballot to determine whether, and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof. Only those labor organizations which have been designated by more than ten per cent (10%) of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

(2) In order to assure employees the fullest freedom in exercising the rights guaranteed by this act, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding twelve (12) month period, a valid election has been held. The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election. Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted; the ballot providing for selection be-

tween the two choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973.

59-1607. Remedies for unfair labor practice—hearing—procedure. Violations of the provisions of section 5 [59-1605] of this act are unfair labor practices remediable by the board in the following manner:

(1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent, at a time and place therein fixed, not less than five (5) working days after the date of service. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby. The person upon whom the charge is served shall file an answer to the complaint. The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony. In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(2) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter in its discretion the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No notice of hearing shall be issued based upon any unfair labor practice more than six (6) months before the filing of the charge with the board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the six (6) month period shall be computed from the day of his discharge. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if it is found that the individual was suspended or discharged for cause. If the evidence is presented before

a member of the board, or before an examiner, the member, or the examiner as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within twenty (20) days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(3) Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973.

59-1608. Petition for enforcement of board order—jurisdiction of district court—procedure—finding by board—review. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order, and shall file in the district court, at its own expense, the record in the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least twenty (20) days before the date set for hearing. After the hearing the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been raised before the board shall be considered by the court, unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(2) The commencement of proceedings under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973.

59-1609. Representative of public employer. The chief executive officer of the state or political subdivision or chairman of the county commissioners, whether elected or appointed, or his designated authorized repre-

sentative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973.

59-1610. Execution of agreement—arbitration procedure—effect of agreement. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this act and signed by the chief executive officer of the state or political subdivision or his representative. A publication of the agreement is not required to make it effective. The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this act is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973.

59-1611. Counsel for public parties to litigation. In any action brought under the provisions of this act in the courts of this state the public employer shall be represented by the attorney general or attorney of subdivision, and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973.

59-1612. Dues deducted from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973.

59-1613. Subpoena powers of board—oaths—refusal to obey—rules. (1) To accomplish the objectives and to carry out the duties prescribed by this act, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place, or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

(3) Any subpoena, notice of hearing or other process or notice of the board issued under the provisions of this act shall be served as provided by the rules of civil procedure.

(4) The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this act.

History: En. Sec. 13, Ch. 441, L. 1973.

59-1614. Mediation of disputes—fact-finding proceedings—arbitration. (1) If after a reasonable period of negotiation over the terms of an agreement, or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

(2) If upon expiration of an existing collective bargaining agreement, or thirty (30) days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate fact-finding.

(3) Within three (3) days of receipt of such petition the board shall submit to the parties a list of seven (7) qualified, disinterested persons from which list the parties shall alternate in striking three (3) names, and the remaining person shall be designated fact finder. This process shall be completed within five (5) days of receipt of the list. The parties shall notify the board of the designated fact finder.

(4) If no request for fact-finding is made by either party before the expiration of the agreement, or thirty (30) days following certification or recognition of an exclusive representative, the board may initiate fact-finding as provided for in (3) above.

(5) The fact finder shall immediately establish dates and place of hearings. Upon request of either party of the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, but no later than twenty (20) days from the day of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public five (5) days after it is submitted to the parties. If the dispute is not resolved fifteen (15) days after the report is submitted to the parties, the report shall be made public.

(6) The public employer and the exclusive representative shall be the only proper parties to fact-finding proceedings.

(7) The cost of fact-finding proceedings shall be equally borne by the board and the parties concerned.

(8) Nothing in this section prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

(9) Nothing in this section prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached the arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to

arbitrate, and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this act for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973.

Separability Clause

Section 15 of Ch. 441, Laws 1973 read "If any provision of this act or the application of such provision to any person or circumstance is held invalid, the remainder of this act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

59-1615. Existing collective bargaining agreements not affected. Nothing in this act shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this act.

History: En. Sec. 16, Ch. 441, L. 1973.

59-1616. Administrative Procedure Act applied. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 17, Ch. 441, L. 1973.

TITLE 60—OIL AND GAS

Chapter
1. Conservation of oil and gas—commission, 60-125, 60-131.1 to 60-131.3, 60-131.6, 60-131.9, 60-144, 60-145.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

Section
60-125. Oil and gas conservation commission—members—term—oath—seal—employees.
60-131.1. Operation of pool as unit—commission to hold hearing—notice.
60-131.2. Commission order—criteria.
60-131.3. Terms and conditions of order—requirements.
60-131.6. Units established by previous order may be included—manner of inclusion.
60-131.9. Property rights—operator's lien—perfection of lien.
60-144. Owners shall make available to commission cores and cuttings.
60-145. Privilege and license tax—quarterly statements—penalties—drilling permit fees—oil and gas conservation moneys.

60-125. Oil and gas conservation commission—members—term—oath—seal—employees. A to C. * * * [Same as parent volume.]

D. Each member appointed to the commission and each person appointed to office by the said commission before entering upon the duties of his office shall take and subscribe to the oath specified in the constitution of the state of Montana and such oath shall be filed in the office of the secretary of state.

E and F. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 238, L. 1953; amd. Sec. 1, Ch. 11, L. 1955; amd. Sec. 1, Ch. 196, L. 1969; amd. Sec. 24, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "section 1, article XIX, of" before "the constitution" in the latter part of subsection D; and made a minor change in style.

Cross-References

Conservation commission continued in department of natural resources and conservation, sec. 82A-1508.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

60-131.1. Operation of pool as unit—commission to hold hearing—notice. The commission, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field, for pressure maintenance or secondary recovery purposes as to oil or oil and gas; or to increase ultimate recovery or to prevent waste of gas from pools or portions of pools where gas only is produced.

(1). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971.

Amendments

The 1971 amendment inserted "as to oil or oil and gas" at the end of the clause

in the first paragraph relating to pressure maintenance and secondary recovery purposes; added "or to increase ultimate recovery or to prevent waste of gas from pools or portions of pools where gas only is produced" at the end of the first paragraph; and made minor changes in phraseology and style.

60-131.2. Commission order—criteria. The commission shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at such hearing, that:

(1). * * * [Same as parent volume.]

(2) The value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected exceeds the estimated additional cost incident to conducting such operations; and

(3). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 33, L. 1969; amd. Sec. 2, Ch. 150, L. 1971.

Amendments

The 1971 amendment inserted "or, as to gas pools only, the value of the economies to be effected" in subdivision (2).

60-131.3. Terms and conditions of order—requirements. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. In the event the unit is formed solely for production of gas, no spacing unit on which is located a well producing or capable of producing gas on the effective date of this act, shall be included in the unit area without the written consent of the majority in interest of the working interest owners of such spacing unit and well.

(2) to (4). * * * [Same as parent volume.]

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%) for such service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, such owners' share of production. Such recovery shall be as follows:

(a)(1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of such owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools or a result of the natural energy therein and without the introduction of a secondary recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of such owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of such owners' share of production.

(6). * * * [Same as parent volume.]

(7) A provision whereby the unit operator, after having operated for a minimum period of two years, can be challenged by any other owner in the unit, and such challenging owner may succeed to the unit operations upon a showing that (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved such challenging owner becoming unit operator; and (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of such conditions of operations.

(8) and (9). * * * [Same as parent volume.]

History: En: Sec. 3, Ch. 33, L. 1969; amd. Sec. 3, Ch. 150. L. 1971.

Amendments

The 1971 amendment added the second sentence to subdivision (1); redesignated former subdivisions (5)(a) and (5)(b) as subdivisions (5)(a)(1) and (5)(a)(2), respectively; inserted "In the case of a field producing oil, or oil and gas" at the beginning of subdivision (5)(a)(1); inserted a new subdivision (5) (b); and made minor changes in phraseology.

60-131.6. Units established by previous order may be included—manner of inclusion. The commission, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the commission made prior to the effective date of this amendment to Title 60, chapter 1, Revised Codes of Montana. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in such previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by such order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations will not be liable for any unit operating costs incurred prior to such person's entry in the unit. At the time such interest is included in the unit, an equipment inventory will be made in order to charge such newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory will be taken immediately prior to adding the newly committed interest.

History: En. Sec. 6, Ch. 33, L. 1969; amd. Sec. 4, Ch. 150, L. 1971.

Amendments

The 1971 amendment substituted "prior to the effective date" for "subsequent to the effective date" in the first sentence.

60-131.9. Property rights—operator's lien—perfection of lien. That portion of the unit production allocated to any tract, and the proceeds

from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to section 60-131.3, subdivision (5) (a) (1), have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area. Such lien may be perfected and enforced in the same manner as provided in Title 45, chapter 5, Revised Codes of Montana, 1947, as amended. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver such allocated share of gas to the owner in kind; but the operator and the other owners of interest shall not be required to bear the cost of providing additional facilities for the delivery of such gas.

History: En. Sec. 9, Ch. 33, L. 1969; amd. Sec. 5, Ch. 150, L. 1971.

Amendments

The 1971 amendment changed the reference in the first sentence to section 60-131.3 in accordance with the amendment of that section; and added the third sentence.

Effective Date

Section 6 of Ch. 150, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

60-144. Owners shall make available to commission cores and cuttings. Any owner drilling a well for gas or oil shall make available to the commission at its field offices representative cores or chips, when available, and the cuttings from such well. Providing, however, that cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of such wells. As pertains to the furnishing of cores, cuttings, or chips, the commission may, however, relieve the owner of any well of the obligation to furnish the same when in the opinion of the commission, the furnishing thereof would be unduly burdensome for such owner; provided, however, that such owner desiring relief must apply to and receive permission from the commission to not so furnish. The owner of any stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the commission's rules and regulations, shall within six (6) months from the date of the cessation of the drilling of such well, make available to the commission, complete sets of sample cuttings and representative cores or chips and well logs of such wells, which logs shall include among other information the size of casing used and the type and depth of water if any located, and such cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the commission until such time that the commission shall desire to use the same; provided that the commission may not use such logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the commission has elapsed unless the owner of such stratigraphic test well consents to their use by the commission prior to the expiration of the three (3) year period. The commission, during the period of impoundment for any cores, cuttings,

chips, or logs from any stratigraphic test well, shall not give any person access to said cores, chips, cuttings or logs, and it shall not disclose any information relating thereto or derived therefrom. The commission shall require, and the owner of any stratigraphic test well shall furnish, prior to the commencement of drilling of such well, a good and sufficient surety bond, to be approved prior to the commencement of such drilling, conditioned upon the proper plugging of such well prior to abandonment, the amount of the said bond to be determined by the estimated depth as in the commission's rules and regulations provided for oil and gas wells, and, prior to abandonment, such wells shall be plugged by the owner thereof, or by the surety should the said owner be in default, such plugging to conform to the standards set down and determined by the commission.

History: En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959; amd. Sec. 1, Ch. 208, L. 1973.

Amendments

The 1973 amendment deleted from the end of the section a sentence reading: "The provisions of this section shall not apply to core holes or tests less than one thousand (1,000) feet in depth drilled primarily for structural information."

Effective Date

Section 2 of Ch. 208, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

60-145. Privilege and license tax—quarterly statements—penalties—drilling permit fees—oil and gas conservation moneys. A. * * * [Same as parent volume.]

(1) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent (⅜¢) per barrel;

(2) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent (¾¢) per barrel;

(3) And, on wells producing, saving and marketing, storing, or exporting, natural gas, said operators and producers shall pay an assessment not to exceed two and one-half (2½) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet. Such payments shall be made during the time the oil and gas conservation commission is in existence. The commission shall by order, without prior notice and/or hearing, fix the amount of such assessments in the first instance and may, from time to time, without prior notice and/or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; provided, however, that in no event shall the assessments fixed by the commission exceed the said limits hereinabove prescribed. The amounts of such assessments to be fixed by the commission in the first instance and from time to time as herein provided, shall be a percentage factor (not to exceed one hundred per cent (100%)) of the rates set forth in subparagraphs (1), (2) and (3) above, and the same percentage factor shall be used and applied by the commission

in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in said subparagraphs (1), (2) and (3) above. The producers of said crude petroleum and natural gas shall pay such assessments on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and said producers shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others as provided for in section 84-6208.

For the purposes of this section, a "lease" shall mean that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well or stratigraphic test well or core hole, shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars ($25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars ($75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars ($150.00).

B to E. * * * [Same as parent volume.]

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973.

Amendments

The 1973 amendment increased the assessment in subdivision A (1) from ¼ cent to ⅜ cent per barrel and in subdivision A (2) from ½ cent to ¾ cent per barrel; increased the assessment in the first sentence of subdivision A (3) from one mill to 2½ mills per ten thousand feet where sold for less than 15¢ per thousand feet, and from one mill to five mills per ten thousand feet where sold for 15¢ or more per thousand feet; and inserted "or stratigraphic test well or core hole" in the final paragraph of subsection A.

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

60-203.2. Enforcement of chapter—rules and regulations.

Cross-References

Functions transferred to department of business regulation, sec. 82A-403(3).

TITLE 61—PARENT AND CHILD

Chapter
1. Parent and child—children by birth and by adoption, 61-112.2.
2. Adoption, 61-203.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

Section
61-112.2. Limitation on amount of recovery.

61-112.2. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed three hundred dollars ($300.00) in addition to taxable court costs, and a reasonable attorney's fee to be set by the court, not to exceed one hundred dollars ($100). The right to recover attorney fees as provided by this section shall be limited to a person bringing an action under section 61-112.1, R. C. M., 1947.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971.

Amendments

The 1971 amendment added the provision for an attorney's fee, including the second sentence.

CHAPTER 2—ADOPTION

Section
61-203. Who may adopt.

61-203. Who may adopt. The following persons are eligible to adopt a child:

(1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.

(2) An unmarried person who is at least eighteen (18) years old.

(3) A married person at least eighteen (18) years old who is legally separated from the other spouse.

(4) In the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified in subdivisions (2) and (3) from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivisions (2) and (3) from 19 to 18 years.

61-206. Withdrawal of consent.

Noncompliance

Mother, after executing affidavit of waiver and consent to adoption, could not effectively revoke that consent by letter addressed to county department of public welfare, without following the procedure prescribed by this section. Application of Hendrickson, — M —, 496 P 2d 1115.

61-209. Investigation.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter
3. State parks, 62-304, 62-307.
5. Horse racing, 62-501, 62-503.

CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

62-205. (5163) **Funds—how disbursed.**

Indirect Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among various city departments using the facility, including the park department. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

CHAPTER 3—STATE PARKS

Section
62-304. Powers and duties.
62-307. Connecting roads.

62-304. Powers and duties. The commission shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state, and may by purchase, lease, agreement, acceptance of donations, or condemnation acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of sections 62-301 through 62-308. A contract may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available. The commission also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The commission may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The commission may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of sections 62-301 through 62-308.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "sections 62-301 through 62-308" for "this act" at the end of the third sentence; sub-

stituted "department of highways" for "state highway system" at the end of the fourth sentence; and made minor changes in style, phraseology and punctuation.

62-307. Connecting roads. The department of highways may construct, improve, and maintain with state highway funds connecting roads between existing state highways and state parks. Each road shall not exceed a total length of ten (10) miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "department of highways" for "state highway commission" at the beginning of the first sentence; and made minor changes in style, phraseology and punctuation.

62-309. Repealed.

Repeal

Section 62-309 (Sec. 9, Ch. 48, L. 1939), relating to reports of the state fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973.

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

62-404. Repealed.

Repeal

Section 62-404 (Sec. 4, Ch. 235, L. 1965), relating to the outdoor recreation advisory and planning committee, was repealed by Sec. 58, Ch. 511, Laws 1973.

CHAPTER 5—HORSE RACING

Section
62-501. Board of horse racing created—appointment—removal—claims.
62-503. Chairman—quorum—costs.

62-501. Board of horse racing created—appointment—removal—claims. There is hereby created the Montana board of horse racing, to consist of five (5) members, who shall be citizens, residents and qualified electors of the state of Montana. At least one (1) member shall be a breeder of racing horses; one (1) member shall be a member of an independent horse racing association; and one (1) member shall be a member of a county fair board that conducts a fair featuring parimutuel betting; and two (2) members shall have occupations nonrelated to horseracing.

After January 1, 1974, the governor shall appoint two (2) members for terms to expire in 1977 and one (1) member for a term to expire in 1976. Upon the expiration of the terms of members the governor shall appoint successors to the board for terms of three (3) years. The senate shall consent and concur in the appointments. This act does not affect the terms of office of the present board.

The governor shall not appoint any member who resides in the same county with a current member's county of residence, and the governor shall appoint members on the basis of experience, qualifications, and representative of a reasonable geographical balance throughout the state.

Each member shall hold office until his successor is appointed and qualified. Vacancies on the board shall be filled by appointment to be made by the governor for the unexpired term.

Any member may be removed from office by the governor for cause after a public hearing. Notice of the hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for the hearing.

History: En. Sec. 1, Ch. 196, L. 1965; amd. Sec. 1, Ch. 457, L. 1973.

Amendments

The 1973 amendment substituted "board of horse racing" for "horse racing commission"; increased the number of members of the board from three to five; substituted "racing" near the beginning of the second sentence of the first paragraph for "thoroughbred or quarter"; inserted the clauses following the first semicolon in the second sentence of the first paragraph; completely rewrote the second paragraph; and inserted the third paragraph.

Cross-References

Board continued in department of professional and occupational licensing, sec. 82A-1602 (13).

62-503. Chairman—quorum—costs. The board shall organize by electing one (1) of its members chairman. Three (3) members of the board shall constitute a quorum for the transaction of any and all business of the board.

The board may incur all costs, charges and expenses reasonably necessary in carrying out the intent and purposes of this act.

Each member may be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of board duties, and shall also be reimbursed for actual and necessary expenses incurred in his official service.

History: En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 213 and once by Ch. 457. Neither amendatory act mentioned nor entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 213, Laws of 1973, substituted "board" for "commission" throughout the section; and added the third paragraph.

Chapter 457, Laws of 1973, substituted "board" for "commission" throughout the section; increased the number of members constituting a quorum from two to three; and made minor changes in style.

Effective Date

Section 2 of Ch. 213, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

TITLE 63—PARTNERSHIP

CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

63-503. Causes of dissolution.

Sale of Partnership Property

Partnership was dissolved by sale of partnership property and articles did not control distribution of proceeds from that sale upon subsequent death of one partner. Hansen v. Kiernan, — M —, 499 P 2d 787.

CHAPTER 7—SPECIAL PARTNERSHIP—FORMATION

63-701. Limited partnership defined.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the "Uniform Limited Partnership Act": Kansas and Maine.

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter
1. Persons, minors, adults and those of unsound mind, 64-101.
2. Personal rights—libel and slander—protection of personal relations, 64-207.1.
3. Freedom from discrimination, 64-301 to 64-303.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

Section
64-101. Minors and adults defined.

64-101. (5673) **Minors and adults defined.** Minors are:

1. Males under eighteen (18) years of age;

2. Females under eighteen (18) years of age. All other persons are adults.

History: En. Secs. 10-11, Civ. C. 1895; re-en Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R. C. M. 1921; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973. Cal. Civ. C. Sec. 25. Field Civ. C. Sec. 11.

Amendments

The 1971 amendment changed the age of minority from 21 for males and 18 for females to 19 in both instances.

The 1973 amendment reduced the age of majority from 19 to 18 for both males and females.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

Section
64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages.

64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages. Before any civil action shall be commenced on account of any libelous or defamatory publication in any newspaper, magazine, periodical, radio or television station, or cable television system, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous or defamatory matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue of a newspaper, magazine or periodical published after the expiration of one week from the receipt of such notice shall be within a reasonable time for correction. In the case of radio and television stations and cable television systems a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, which is made within seven (7) days following receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall consti-

tute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, shall constitute a correction within the meaning of this section. If it shall appear upon trial that the publication was made under honest mistake or misapprehension, then a correction, timely published, without comment, in a position and type as prominent as the alleged libel, or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

History: En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971.

Amendments

The 1971 amendment inserted references to cable television systems in the first and fifth sentences; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 58, Laws 1971 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—FREEDOM FROM DISCRIMINATION

Section
64-301. Freedom from discrimination as civil right—employment—public accommodations.
64-302. Definition of terms.
64-303. Discrimination as misdemeanor.

64-301. Freedom from discrimination as civil right—employment—public accommodations. The right to be free from discrimination because of race, creed, color, sex, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) and (2). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971.

Amendments

The 1971 amendment inserted "sex" in the introductory paragraph.

64-302. Definition of terms. Terms used in this act shall have the following definitions:

(1) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one (1) or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(2) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage,

custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, sex, or color.

(3) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed, sex, or color, to be treated as not welcome, accepted, desired or solicited.

(4) "National origin" includes "ancestry."

(5) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation of public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

History: En. Sec. 2, Ch. 201, L. 1965; amd. Sec. 2, Ch. 39, L. 1971.

Amendments

The 1971 amendment inserted "sex" near the ends of paragraphs (2) and (3); and made minor changes in style and punctuation.

64-303. Discrimination as misdemeanor. Every person who denies to any other person because of race, creed, color, sex, or national origin the right to employment; (1) by refusing to hire, (2) by discharging, (3) by barring from employment, or (4) by discriminating against such person in compensation or in other terms or conditions of employment; and

every person who denies to any other person because of race, creed, color, sex, or national origin the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 201, L. 1965; amd. Sec. 3, Ch. 39, L. 1971.

Amendments

The 1971 amendment inserted "sex" in two places; and made minor changes in style.

TITLE 66—PROFESSIONS AND OCCUPATIONS

Chapter

1. Architecture—regulation of practice, 66-101, 66-103, 66-107 to 66-109, 66-112.
2. Auctioneers and auction sales, 66-223, 66-227.
4. Barbers and barbershops, 66-408, 66-411.
6. Podiatry—regulation of practice, 66-603.
8. Cosmetology (beauty shops) regulation, 66-803, 66-815.
9. Dentistry—regulation of practice, 66-905.
10. Medicine—regulation of practice, 66-1012, 66-1013, 66-1023, 66-1025, 66-1027 to 66-1030.
13. Optometry—regulation, 66-1305, 66-1307, 66-1318.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1501, 66-1502, 66-1504, 66-1506 to 66-1509, 66-1521.
16. Pawnbrokers and junk dealers—regulations, 66-1607.
18. Public accountants—regulation, 66-1819, 66-1820.
19. Real estate license act, 66-1929.
22. Veterinary medicine—regulation of practice, 66-2204.
23. Engineers and land surveyors, 66-2326, 66-2337, 66-2344.
24. Plumbers, 66-2426.
25. Physical Therapists Practice Act, 66-2502.
26. Water Well Contractor's License Act, 66-2604.
27. Morticians and funeral directors, 66-2708.
28. Electrical Safety Law, 66-2802, 66-2804, 66-2812.
29. Masseurs—regulation and licensing, 66-2904.
31. Nursing home administrators, 66-3101 to 66-3105, 66-3109, 66-3110, 66-3112.
32. Psychologists—licensing and regulation, 66-3201 to 66-3214.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

Section

66-101. Appointment of board of architects.
66-103. Definitions—examinations for certificates to practice—granting of certificates—registration without examination under certain circumstances.
66-107. Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions.
66-108. Fees payable by applicants for examination—disposition of fees.
66-109. Compensation of members of board—disposition and use of funds.
66-112. Revocation of license.

66-101. (3229) **Appointment of board of architects.** Within thirty days after the passage of this act, the governor, with the consent and advice of the senate, shall appoint three skilled and capable architects, who shall have been residents of the state of Montana for not less than three years prior to their appointment, not more than two of whom shall be residents of the same county, and who shall have been in continuous practice of the profession for three years, who shall constitute the board of architectural examiners for the purpose of this act.

Of the members appointed to terms beginning on March 27, 1973, one (1) member shall be appointed for a one (1) year term, one (1) member shall be appointed for a two (2) year term, and one (1) member shall be appointed for a three (3) year term. After the expiration of these initial terms, members shall serve three (3) year terms. All vacancies shall be filled in like manner as the appointments are made. Appointments made

when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session.

History: En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R. C. M. 1921; amd. Sec. 1, Ch. 439, L. 1973.

Amendments

The 1973 amendment inserted the first sentence of the second paragraph; and substituted "After the expiration of these initial terms, members shall serve three (3) year terms" for "The architects so appointed shall hold their respective offices for term of four years" at the beginning of the second sentence of the second paragraph.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(3).

66-103. (3231) **Definitions—examinations for certificates to practice—granting of certificates—registration without examination under certain circumstances.** (a) to (c). * * * [Same as parent volume.]

(d) A building, for the purposes of this act, is a structure intended primarily for human occupancy or use.

(e) Every person hereafter wishing to practice architecture in this state shall apply to said board for a certificate so to do. Every person so applying shall have successfully completed the requirement of prerequisites in education, practical experience and a written examination as prescribed by the board in conformance with the standard national council of architectural registration boards examination and grading procedure. After examination said board shall, if the candidate has been found qualified, grant a certificate to such candidate to practice architecture within the state of Montana, which said certificate can only be granted on the consent of not less than two members of the board, and attested by the secretary, and have the seal of said board attached thereto; provided, that an architect holding a valid and current license to practice in another state, territory or country will be granted a certificate to practice in Montana following presentation of a national council certificate issued by national council of architectural registration boards and approved by the Montana board of architects. But no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of architecture in the state of Montana. The board may, if deemed necessary, require an examination of applicants for license from other states after careful consideration of credentials from such states. The board shall by regulation establish methods and procedures for investigation of applicants for license by reciprocity.

(f). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973.

Amendments

The 1973 amendment substituted "intended primarily for human occupancy or use" for "consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, including relating mechanical and electrical equipment, with or without parts or appurtenances" at the end of subsection (d); substituted the second sentence of subsection (e) for sentences reading "Every person so applying shall submit to an examination of the following branches to wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, structural, mechanical and electrical engineering phases of construction, architectural drawings, technical education and experience, and such other branches as the board may deem advisable. Said board shall cause examination to be most scientific and practical, but of sufficient severity to test

the candidate's fitness to practice architecture in this state"; deleted from the third sentence of subsection (e) a proviso allowing the president to grant interim certificates good until the next board meeting; and substituted the present proviso to the third sentence of subsection (e) for a proviso allowing the board to make reciprocal arrangements with other states.

66-107. (3235) **Registration limited to individuals — employees of architects entitled to practice under supervision—exceptions—exemptions.**

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R. C. M. 1921; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973.

Compiler's Notes

Laws 1973, Ch. 439 amended this section but made no change therein. For section, see parent volume.

66-108. (3236) **Fees payable by applicants for examination—disposition of fees.** Applicants for examination shall pay in advance to the secretary of said board a fee commensurate with the cost and set by the board, which fee shall defray the entire expense of such candidate, before the aforesaid board of architects. Any applicant failing to pass the said examination shall be entitled to a second examination within one (1) year upon payment of a reasonable fee, prescribed by the board.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the earmarked revenue fund for the use of the board of architectural examiners.

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973.

Amendments

The 1973 amendment substituted "commensurate with the cost and set by the board" for "of twenty-five dollars ($25)" in the first sentence of the first paragraph; corrected the name of the board; and substituted "a reasonable fee, prescribed by the board" for "of five dollars ($5) for each section of the said examination" at the end of the second sentence of the first paragraph.

66-109. (3237) **Compensation of members of board—disposition and use of funds.** Each member of the examining board is hereby allowed the sum of twenty-five dollars ($25) per day plus mileage in accordance with section 59-801 and a per diem allowance of actual and necessary expenses while in the discharge of his actual duties.

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of architectural examiners [architects].

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973.

Compiler's Notes

The compiler has inserted the bracketed word "architects" at the end of the section.

Amendments

The 1973 amendment increased the basic per diem from $20 to $25; substituted "in accordance with section 59-801 and a per diem allowance of actual and necessary expenses" for the former mileage rate of ten cents per mile; and deleted a third paragraph requiring the members to report under section 82-4002.

66-112. (3240) **Revocation of license.** The board of architectural examiners [architects] may revoke any certificate in the manner herein-

after provided if proof satisfactory to the board be presented in the following cases: (a) In case it is shown that the certificate was obtained through fraud or misrepresentation; (b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings; (d) In case the holder of the certificate has been found guilty by said board of any of the following acts which are hereby declared to constitute unprofessional conduct; (1) Willful departure in any material respect from approved plans or specifications without the consent of the owner or his duly authorized representative, (2) Willful violation of the building codes of the state or any political subdivision thereof, (3) Aiding or abetting any unlicensed person to violate or evade the provisions of this act, (4) Sealing or signing plans or specifications not prepared under his direct supervision and control; or (e) In case the holder of the certificate has violated standards of professional conduct adopted by the board.

The proceedings for revocation of a certificate shall be commenced by filing written charges against the accused with the board of architects either by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty (30) calendar days in advance of such hearing. Where personal service cannot be made within the state of Montana, service may be made by publication in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 93-3013, 93-3014, and 93-3015. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the board is hereby empowered to administer oaths. The board shall make a written report of its findings and conclusions, which report, with a transcript of the entire record of the proceedings, shall be filed in the office of the secretary of state, and, if the board's findings and conclusions shall be adverse to the accused, his or her certificate shall stand revoked and annulled at the expiration of thirty (30) days from the filing of such report, unless within said period of thirty (30) days a writ of review shall be issued as hereinafter provided, in which event said certificate shall not stand suspended until the final determination of the courts upon such writ of review.

Any party aggrieved by the decision of the said board may seek a review thereof in the district court of any judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

The said board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce the documents when duly directed by said board, the board shall

have power to refer the said matter to the district court of the first judicial district of the state of Montana, which may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R. C. M. 1921; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973.

Compiler's Notes

The compiler has inserted the bracketed word "architects" near the beginning of the section.

Amendments

The 1973 amendment added clause (e) at the end of the first paragraph; substituted "architects" for "architectural examiners" in the first sentence of the second paragraph; and substituted "any judicial district" for "the first judicial district" in the third paragraph.

Effective Date

Section 7 of Ch. 439, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES

Section
66-223. Application for license—contents.
66-227. Inventory of merchandise sold and prices received—filing.

66-223. Application for license—contents. Any person, firm, association or corporation desiring to offer any new goods, wares or merchandise for sale at public auction shall file application for a license for that purpose with the treasurer of the county in this state in which the said auction is proposed to be held. The application shall be filed not less than ten (10) full days prior to the date the said auction is to be held. The application shall state the following facts:

(a) to (d). * * * [Same as parent volume.]

(e) Attached to the application shall be copies of notices, which ten (10) days before the said application has been filed, shall have been mailed registered mail by the proposed seller to the state department of revenue of the state of Montana or such other department as may be charged with the duty of collecting gross income taxes, corporation licenses, or such other taxes of a comparable nature, and to the assessor of the county in which said auction is to be held. The said notices must state the precise time and place where the said auction is to be held, the approximate value of the new goods, wares or merchandise to be offered for sale or sold and such other information as the said state department of revenue may request.

(f) and (g). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 111, L. 1955; amd. Sec. 22, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first and second sentences of subdivision (e); and deleted "or the said county assessor" near the end of the second sentence in subdivision (e), in order to implement article VIII, section 3 of the 1972 constitution.

66-227. Inventory of merchandise sold and prices received—filing. Within ten (10) days after the last day of said auction sale, the applicant

shall file in duplicate with the county treasurer of the county wherein said auction sale was held, an inventory of all merchandise sold at such auction and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said treasurer. The county treasurer shall immediately after receiving such report and inventory forward a copy thereof to the state department of revenue.

History: En. Sec. 8, Ch. 111, L. 1955; amd. Sec. 23, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

CHAPTER 4—BARBERS AND BARBERSHOPS

Section
66-408. Compensation, funds and reports.
66-411. Fees to be paid by apprentices, students, barbers, barbershops and training programs.

66-406. (3228.24) Board of barber examiners, etc.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(5).

66-408. (3228.26) **Compensation, funds and reports.** Each member of the board shall receive a compensation of thirty dollars ($30) per day while engaged in the duties of inspecting barbershops and twenty-five dollars ($25) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board or while engaged in the duties of inspecting barber shops.

The board of barbers shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary.

The board shall make reports as provided in section 82-4002.

History: En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973.

Amendments

The 1973 amendment inserted "thirty dollars ($30) per day while engaged in the duties of inspecting barbershops and" in the first paragraph; added "or while engaged in the duties of inspecting barbershops" at the end of the first paragraph; and corrected the name of the board at the beginning of the second paragraph.

66-411. (3228.29) **Fees to be paid by apprentices, students, barbers, barbershops and training programs.** (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be twenty-five dollars ($25.00). The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be twenty dollars ($20.00), and for the issuance of said certificate an additional ten dollars ($10).

(2) Each person registered as a barber or barber apprentice, shall on or before the first day of July of each year pay a license fee of ten dollars ($10) for the renewal of his or her certificate of registration, and if any

barber shall fail to have such certificate renewed on or before the first day of July of each year such barber shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee of ten dollars ($10), in addition to the regular fee of ten dollars ($10) provided for herein, and if a certificate of registration is not renewed within one (1) year after date of expiration thereof, such barber shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a nine (9) months' course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

(3) In addition to the fees and charges now provided by existing law, all barbershops heretofore established, and which have been under the inspection of the board of barbers, shall pay an annual license fee of ten dollars ($10). Barbershops hereafter established shall pay an initial inspection fee of twenty dollars ($20) for the first year or portion thereof, and shall pay an annual license fee of ten dollars ($10).

(4) All barbershop, school or college licenses shall expire on the first day of July of each year, following the issuance of said license, and every owner or manager of a barbershop, school or college which continues in active operation shall annually, on or before July first renew his barbershop, school or college license and pay the required fee. For the first year this act is in effect, all licenses which expire on the thirty-first day of May shall be deemed in force until the first day of July.

Every barbershop which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay a penalty, or a restoration fee, of ten ($10.00) dollars, and each barber school or college which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay penalty, or restoration fee, of fifty-five ($55.00) dollars.

Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter, shall pay an annual license fee of fifty dollars ($50) to the board of barbers, or a ten (10) day license fee of fifteen dollars ($15), and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the board at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 301, and once by Ch. 330. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a compo-

site section embodying the changes made by both amendments.

Amendments

The 1971 amendment increased the fees specified in subsection (3) from $3.00, $15.00 and $3.00 to $5.00, $20.00 and $5.00 respectively.

Chapter 301, Laws of 1973, increased from $5.00 to $10.00 the fees specified at the end of subsection (1), in the first part of subsection (2), and in subsection (3); corrected the name of the board; and made minor changes in style.

Chapter 330, Laws of 1973, added the third paragraph to subsection (4).

Effective Date

Section 2 of Ch. 301, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 15, 1973.

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

66-501. (3138) State board of chiropractic examiners created, etc.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(7).

66-505. (3142) Applications to practice, etc.

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

CHAPTER 6—PODIATRY—REGULATION OF PRACTICE

Section

66-603. Podiatry examiners — examination — qualifications — schools — fees — nonresident practitioners.

66-603. (3154.3) **Podiatry examiners — examinations — qualifications —schools—fees—nonresident practitioners.** (1) There is hereby created a state board of podiatry examiners consisting of one physician to be selected at its annual meeting by the state board of medical examiners from its membership, the secretary of the state board of medical examiners, and three (3) podiatrists to be selected and to serve as hereinafter provided. The Montana association of podiatrists shall select six (6) podiatrists from its membership, who shall be residents of and shall have engaged in the active practice of podiatry for at least two (2) years in this state, and shall be of high integrity and ability. Within thirty (30) days from and after the selection of said six (6) podiatrists as aforesaid, the governor of Montana shall appoint three (3) of their number and so designate the term of office of each, that the term of office of one member shall expire in one (1) year, one in two (2) years, and one in three (3) years, from date of appointment; annually thereafter, the governor shall appoint one member who shall be a licensed podiatrist possessing the qualifications hereinbefore mentioned who shall serve for a period of three (3) years or until his successor shall have been appointed by the governor. Should any vacancy arise on aforesaid board before the expiration of the term of office of any of the podiatrist members of said board, such vacancy shall be filled by appointment by the governor within thirty (30) days, such appointee to possess the qualifications heretofore stated, and to be selected from those remaining of the said six (6) podiatrists theretofore selected by the Montana association of podiatrists unless said number of selected podiatrists shall have been exhausted.

(2) Examinations shall be held semiannually at such places and time as the state board of podiatry examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of podiatry in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice podiatry. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent and of having at least two (2) years of instruction in an accredited school of podiatry recognized as being in good standing by the Montana board of podiatry examiners, but after June 1st, 1941, no school of podiatry shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of podiatry. All podiatrists, actively engaged in the practice of podiatry one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of podiatry examiners be entitled to a license without examination. A license without written examination may be issued to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two (2) years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars ($50) to the secretary of the board of medical examiners. Wherever the appellation chiropodist or chiropody appears in the Montana statute it shall mean podiatrist or podiatry.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973.

Amendments

The 1971 amendment deleted "of being at least twenty-one (21) years of age" after "satisfactory proof" in the third sentence of subsection (2); and made minor changes in phraseology and style.

The 1973 amendment changed all references to chiropody to podiatry; changed the name of the state board of chiropody medical examiners to state board of podiatry examiners; increased the number of podiatrists to be selected under the first section of subsection (1) from two to three; and added the last sentence to subsection (2).

Cross-References

Board continued in department of professional and occupational licensing, sec. 82A-1602 (6).

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section
66-803. Requirements for practicing or teaching cosmetology or operating a school of cosmetology.
66-804. [Transferred.]
66-815. Fees.

66-803. (3228.3) **Requirements for practicing or teaching cosmetology or operating a school of cosmetology.** Before anyone may practice or teach cosmetology, or any person, firm, or copartnership, or corporation may operate a school of cosmetology, such person, firm, or copartnership or corporation must obtain a license or certificate of registration from the state board as hereinafter provided. To be eligible to take the

examination to practice cosmetology the applicant must not be less than eighteen (18) years of age and a graduate of the eighth grade school and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than fourteen (14) months, and has received a diploma from said beauty school, or must have completed the course of study in cosmetology prescribed by the state board of education, ex officio regents of the university of Montana, for northern Montana college. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology.

Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the state superintendent of public instruction.

(2) Meet the following requirements:

(a) and (b). * * * [Same as parent volume.]

The applicant must qualify by filing an application as prescribed by the board and by taking and passing the examination prescribed and given by the board. The license must be renewed annually as provided in section 66-816, R. C. M. 1947.

Anyone failing twice to pass an examination may not apply to retake the examination:

(1) Sooner than six (6) months after the date of the second failure; or

(2) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

Provided, further, the board may grant to graduates of registered schools of this state upon the payment of the fee prescribed by law, a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board, and the results are announced. No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm or copartnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

No teacher or student teacher shall be permitted to practice cosmetology on the public in a school. Any school that enrolls student teachers for a course of student teacher training shall not have at any one (1) time

more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(1) and (2). * * * [Same as parent volume.]

(3) It shall maintain a school term of not less than two thousand (2,000) hours, and shall prescribe a course of practical training and technical instructions equal to the requirements for state board examinations, which course of training and technical instruction shall be prescribed by the state board.

(4) and (5). * * * [Same as parent volume.]

(6) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in section 66-811.

(7). * * * [Same as parent volume.]

(8) The state board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars ($5,000) and in a form and manner to be prescribed by the board.

(9) and (10). * * * [Same as parent volume.]

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 268 and once by Ch. 310. Neither amendatory act mentioned nor incorporated the changes made by the other. The compiler has made a composite section embodying the changes made by both amendments which do not appear to conflict. In so far as the amendments appear to conflict with respect to the amount of the fee for a temporary license, the compiler has used the text of Ch. 310, the later in time of enactment.

Amendments

The 1971 amendment deleted from the first group of numbered subdivisions a subdivision (1) reading: "Be twenty-one (21) years of age or older"; redesignated former subdivisions (2) and (3) as subdivisions (1) and (2), respectively; and made minor changes in style.

Chapter 268, Laws of 1973, increased the fee specified in the proviso for a temporary license pending examination from two dollars to four dollars; and inserted "and the results are announced" at the end of that proviso.

Chapter 310, Laws of 1973, extended the maximum length of a beauty school course from twelve to fourteen months in the first paragraph; substituted "the fee prescribed by law" for "a fee of two dollars ($2)" in the first sentence of the proviso; deleted "extending over a period of ten (10) consecutive months" following "two thousand (2,000) hours" in paragraph (3) of the requirements for a school of cosmetology; and inserted "Licenses or" at the beginning of paragraph (6) under requirements for schools of cosmetology.

66-804. [Transferred.]

Compiler's Notes

Section 66-804 was redesignated as section 82A-1602.8 and amended by Sec. 1, Ch. 196, Laws 1973.

66-815. (3228.15) **Fees.** All fees, licenses and certificates of registration shall be paid to the Montana state examining board of cosmetology not to exceed the following respective amounts as may be prescribed by the board. Each student enrolling in a registered cosmetology school shall pay a registration fee of three dollars and fifty cents ($3.50) to the Montana state examining board of cosmetology. Each applicant for examination to practice shall pay at the time of such application a fee of twenty dollars ($20). Each applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of four dollars ($4) for a temporary license to practice as an operator in accordance with the provisions of this act. Each applicant for examination to teach shall pay at the time of such application a fee of thirty dollars ($30). Each person practicing cosmetology as an operator shall pay a fee of six dollars ($6) for the issuance of a license. Each applicant for a manager-operator license shall pay a fee of ten dollars ($10) for the issuance of such a license. Each applicant for itinerant license as a cosmetologist shall pay a fee of fifty dollars ($50). Every person, firm, copartnership or corporation owning, operating or conducting a cosmetological salon shall pay the sum of ten dollars ($10) for the issuance of the certificate of registration. Each person teaching or instructing cosmetology shall pay a fee of ten dollars ($10) for the issuance of a license. Every person, firm, copartnership or corporation owning, operating or conducting a school of cosmetology shall pay the sum of fifty dollars ($50) for a certificate of registration. Every person, firm, copartnership or corporation owning, operating or conducting an advanced school of cosmetology shall pay the sum of fifty dollars ($50) for a certificate of registration. Every person, firm, copartnership or corporation owning, operating or conducting a teacher-training unit in a school of cosmetology shall pay the sum of fifty dollars ($50) for a certificate of registration. Duplicate licenses or certificates of registration shall be issued upon payment of two dollars ($2) and proof of necessity. Such license and registration fees shall be paid annually in advance to the Montana state examining board of cosmetology. No other or additional license or registration fee shall be imposed by any municipal corporation or other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963; amd. [Sec. 1,] Ch. 324, L. 1971.

Amendments

The 1971 amendment substantially rewrote this section and generally increased the fees. For previous text, see parent volume.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

Section

66-905. Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.

66-901. (3115.1) **State board of dental examiners, etc.**

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(9).

66-905. (3115.5) **Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.** (1) to (5). * * * [Same as parent volume.]

(6) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of said board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty-five dollars ($25) for each such examination.

History: En. Sec. 5, Ch. 48, L. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971.

Amendments

The 1971 amendment deleted former subsection (6); and redesignated former subsection (7) as subsection (6).

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

Section
66-1012. Practice of medicine defined—exemptions from licensing requirements.
66-1013. State board of medical examiners—qualifications and appointment.
66-1023. Practice authorized by certificate—physician's certificate.
66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement.
66-1027. Qualifications for licensure—limitations.
66-1028. Approved medical school.
66-1029. Approved internship.
66-1030. Approved residency.

66-1012. Practice of medicine defined—exemptions from licensing requirements. (1). * * * [Same as parent volume.]

(2) Nothing herein shall be contrued to prohibit, or to require a license hereunder with respect to, any of the following acts:

(a) to (e). * * * [Same as parent volume.]

(f) the practice of osteopathy under the conditions and limitations defined in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act;

(g) to (m). * * * [Same as parent volume.]

Provided, however, that all licensees in this subsection (2) designated or referred to, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and shall not use the title M.D., or any word or abbreviation to indicate, or to induce others to believe that he or she is engaged in the diagnosis or treatment of persons afflicted with disease, injury or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971.

Amendments

The 1971 amendment substituted "in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act" at the end of subdivision (2) (f) for "by the laws of this state as now or hereafter enacted."

66-1013. State board of medical examiners—qualifications and appointment. There is hereby created the Montana state board of medical examiners, herein referred to as the board, which shall consist of seven (7) members, to be appointed by the governor, with the advice and consent of the senate, as herein provided, and to have the qualifications herein prescribed. Upon the taking effect of this act, the state board of medical examiners, as constituted under the laws of this state immediately prior thereto, is hereby abolished but the members thereof shall constitute the initial board under this act and the respcetive terms of such members shall extend through and expire on September 1 of the year during which their respective terms, as determined by their appointment under such prior law, would have expired. The terms of their successors shall be so arranged as to succeed the present incumbents as their terms expire. The board shall be comprised at all times of six (6) members having the degree of doctor of medicine, and one (1) member having the degree of doctor of oesteopathy, all of whom shall be citizens of the United States and shall have been licensed and shall have practiced medicine in this state for at least five (5) years, not more than one (1) of whom, except for the member having the degree of doctor of osteopathy, shall be from the same county to ensure reasonable representation on said board from the several parts of the state, and, all of whom shall have been residents of this state for at least five (5) years. After the effective date of this act the governor shall appoint a person, who holds the degree of doctor of osteopathy and is licensed under this act, to the vacancy which occurs on the board after July 1, 1972; and the five (5) year requirement of practice and residency shall be waived for this initial appointment. However, if no person holding the degree of doctor of osteopathy is licensed under this act as of July 1, 1972, then a person holding the degree of doctor of medicine shall be appointed, and a person holding the degree of doctor of osteopathy shall be appointed to the board as soon as such a person becomes licensed under this act, is willing to serve, and a subsequent vacancy occurs. All vacancies occurring shall be filled by appointment or reappointment by the governor with the advice and consent of the senate. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session of the senate. Each member of the board shall, before he enters upon the duties of his office, take an oath or affirmation to support the constitution of the United States and of the state of Montana and faithfully to perform the duties of the office upon which he is about to enter. Members of the board shall remain in office until their successors have been appointed. A member of the board may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence or unprofessional or dishonorable conduct.

History: En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971.

Amendments

The 1971 amendment changed the fourth sentence so as to substitute a doctor of osteopathy for one of the seven doctors of medicine; inserted "except for the member having the degree of doctor of osteopathy" before "shall be from the same county" in the fourth sentence; and inserted new fifth and sixth sentences, relating to the initial appointment of a doctor of osteopathy.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(15).

66-1023. Practice authorized by certificate—physician's certificate. The physician's certificate, which may be issued only to citizens of the United States, authorizes the holder to perform one or more of the acts embraced in section 66-1012, R. C. M. 1947, in a manner reasonably consistent with his training, skill and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971.

Amendments

The 1971 amendment added "R. C. M. 1947" to the reference to section 66-1012.

66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement. (1) Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of:

(a) and (b). * * * [Same as parent volume.]

(c) a valid, unsuspended and unrevoked license or certificate issued to the applicant on the basis of an examination, by a duly constituted examining board under the laws of any other state or any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were, in the considered judgment of the board, essentially equivalent to those of the state of Montana for the granting of a license to practice medicine, provided:

(i) that under the scope of such license or certificate that the applicant was authorized to practice medicine in such state, territory or country;

(ii) to (v). * * * [Same as parent volume.]

(vi) holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the board. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973.

Amendments

The 1971 amendment added subdivision (c) (vi) and made a minor change in phraseology.

The 1973 amendment inserted "granted in 1955 or before" following "degree of doctor of osteopathy" in subdivision (c) (vi); and added the second sentence to subdivision (c) (vi).

Effective Date

Section 2 of Ch. 403, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

66-1027. Qualifications for licensure—limitations. (1) No person shall be granted a physician's certificate to practice medicine in the state of Montana unless he:

(a) is a citizen of the United States;

(b) is of good moral character, as determined by the board;

(c) is a graduate of an approved medical school as defined in section 66-1028.

(d) has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship as herein defined;

(e) has made a personal appearance before the board. The board may grant such license subject to terms of probation or other conditions or limitations set by the board of [or] may refuse to grant a license to any such person if he has committed any of the acts or offenses herein defined as unprofessional conduct, or is otherwise unqualified.

(2) No person shall be granted a temporary license to practice medicine in the state of Montana unless he:

(a) is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(b) is of good moral character, as determined by the board;

(c) is a graduate of an approved medical school as defined in section 66-1028;

(d) has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is, at least, the equivalent of one (1) year internship as herein defined;

(e) has made a personal appearance before at least one (1) member of the board; and

(f) has been approved for temporary licensure by the executive secretary of the board; and

(g) a temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may grant such temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse to grant a license to any such person if he has committed any of the acts or offenses herein defined as unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend such temporary license.

The board may, in any case of an applicant for a temporary certificate, require a written, oral or practical examination of said applicant.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted former subdivisions (1)(a) and (2)(a), each of which read "is at least twenty-one (21) years of age"; redesignated former subdivisions (b) through (f), inclusive, of subsection (1) as subdivisions (a) through (e), inclusive; redesignated former subdivisions (b) through (h), inclusive of subsection (2) as subdivisions (a) through (g), inclusive; and made minor changes in phraseology and style.

66-1028. Approved medical school. An approved medical school is a school which either (a) is accredited by the American Osteopathic Association, or (b) conforms to the minimum education standards as established by the Council on Medical Education of the American Medical Association or successors for medical schools or is equivalent in the sound discretion

of the board of medical examiners of the state of Montana, it being provided that the board shall have the authority upon investigation of the educational standards and facilities thereof to approve any other medical school, including foreign medical schools.

History: En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted "either," clause (a) and the designation for clause (b).

66-1029. Approved internship. An approved internship is an internship training program of at least one (1) year in a hospital which is either (a) approved for intern training by the American Osteopathic Association, or (b) conforms to the minimum standards for intern training established by the Council on Medical Education of the American Medical Association or successors; provided, however, that the board shall have the authority, upon investigation, to approve any other internship.

History: En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted "which is either" and clause (a); inserted the designation for clause (b); and made minor changes in phraseology.

66-1030. Approved residency. An approved residency is a residency training program in a hospital conforming to (a) the minimum standards for residency training established by the Council on Medical Education of the American Medical Association or successors or (b) approved for residency training by the American Osteopathic Association; provided, however, that the board shall have the authority upon investigation to approve any other residency. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

History. En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted the designation for clause (a); and inserted "or" and clause (b).

CHAPTER 12—NURSING—REGULATION OF PRACTICE

66-1223. Creation of the Montana state board of nursing, etc.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(18).

CHAPTER 13—OPTOMETRY—REGULATION

Section
66-1305. Examinations—admission to practice—nonresidents.
66-1307. Renewal of registration—revocation—fees.
66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption.

66-1303. (3157) Examiners in optometry.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(19).

66-1305. (3159) **Examinations — admission to practice — nonresidents.** 1. * * * [Same as parent volume.]

2. No person shall be eligible to take said examination who is not eighteen (18) years of age, and who is not a citizen of the United States of America, and who is not of good moral character.

3 to 6. * * * [Same as parent volume.]

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R. C. M. 1921; amd. Sec. 4, Ch. 171, L. 1925; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the minimum age specified in subsection 2 from twenty-one to eighteen years.

66-1307. (3161) **Renewal of registration — revocation — fees.** Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of fifty dollars ($50) in return for which a renewal of registration shall be issued. The board may present to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of thirty-five dollars ($35).

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971.

Amendments

The 1971 amendment increased the maximum renewal fee specified in the first sentence from $20 to $50, and increased the penalty specified at the end of the section from $25 to $35.

66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption. Beginning June 1, 1971 each Montana licensed optometrist in active practice in the state of Montana shall be required to attend not less than twelve (12) hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the Montana state board of examiners in optometry, as a prerequisite for his license renewal. A copy of this act shall be sent to each licensee by the board prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971.

Title of Act

An act to require each Montana licensed optometrist to attend continuing educational programs for not less than twelve (12) hours annually.

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

66-1401. (3125) **Board of osteopathic examiners, etc.**

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(20).

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section

66-1501. Sale of drugs, medicines, etc., unlawful except as provided herein.
66-1502. Terms defined as used in this act.
66-1504. Montana state board of pharmacy—powers of board.
66-1506. Examination of applicants for registration—fees—certificates.
66-1507. Annual renewal of registration fees.
66-1508. Store license—certified pharmacy license—suspension or revocation.
66-1509. Judicial review of acts of board.
66-1521. Attorney general to be attorney for state board of pharmacy—prosecutions—secretary to assist in enforcement—duties of county attorneys.

66-1501. (3170) **Sale of drugs, medicines, etc., unlawful except as provided herein.** (a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) It shall be unlawful for any proprietor, owner or manager of a pharmacy, or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern in the temporary absence of such pharmacist.

(c) It shall be unlawful for any person falsely to assume or pretend to the title of pharmacist or intern, unless such person has a license as such issued and in force pursuant to the terms of this act.

(d) It shall be unlawful for any person other than a licensed and registered pharmacist, or a licensed and registered intern to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons, except as in this act provided.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" throughout the section and made a minor change in phraseology.

66-1502. (3170.1) **Terms defined as used in this act.** (a) and (b) * * * [Same as parent volume.]

(c) The term "intern" shall mean a natural person licensed as such by the state board of pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons in a pharmacy having a pharmacist in charge.

(d) to (n) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsection (c).

66-1503. (3173) **Montana state board of pharmacy, etc.**

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(21).

66-1504. (3174) **Montana state board of pharmacy—Powers of board.** (a) * * * [Same as parent volume.]

(b) Powers and duties of board of pharmacy. The Montana state board of pharmacy shall have power, and it shall be its duty:

(1) to (5) * * * [Same as parent volume.]

(6) To examine, license and register as pharmacists all applicants whom the board shall deem qualified as such as prescribed herein. To regulate the practice of interns in accordance with national standards. To license pharmacies and certain stores, and to issue certificates of "certified pharmacy" as in this act provided.

(7) To revoke temporarily or permanently, upon fair hearing, after reasonable notice of formal charges have been served, licenses issued by it to any pharmacist or intern whenever the holder of such license has obtained the same by false representations or fraud of any character or shall be an habitual drunkard or addicted to the use of narcotic drugs, or shall have been convicted of a felony, or shall have been convicted of violating the pharmacy law, or shall have been found guility by the board of incompetency in the preparation of prescriptions, or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant subject to the right of any person whose license may be revoked to review by the district court of the proper county on any question of law and fact.

(8) to (11) * * * [Same as parent volume.]

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R. C. M. 1921; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971.

Amendments

The 1971 amendment inserted the second sentence of subdivision (b)(6); and substituted "intern" for "assistant pharmacist" in subdivision (b)(7).

66-1504.1. Repealed.

Repeal

Section 66-1504.1 (Sec. 12, Ch. 314, L. 1969), relating to the placement of drugs under the Dangerous Drug Act, was repealed by Sec. 31, Ch. 412, Laws 1973.

66-1506. (3176) **Examination of applicants for registration—fees— certificates.** (a) The board shall meet at least once a year to examine applicants for registration as pharmacists and interns and to transact its other business, giving reasonable notice of all examinations by mail, to all known applicants therefor. The secretary shall record the names of all persons examined by the board together with the grounds upon which the right of each to examination was claimed and also the names of all persons registered by examination or otherwise. The fee for any examination shall be twenty-five dollars ($25) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(b) Upon again making payment of such fee any applicant who fails may be entitled to take the next succeeding examination free of charge.

(c) Fees for registration by reciprocity shall be fifty dollars ($50).

Qualifications for examination. To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and shall be a graduate of the school of pharmacy of the state University of Montana or of a college or school of pharmacy recognized and approved by, or a member, of the American association of colleges of pharmacy, but such applicant shall not receive a registered pharmacist's license until he has complied with the internship requirements established by the state board of pharmacy. During this period, provided applicant has passed such examination, he shall be licensed as an intern only.

Reciprocity. The board may, in its discretion, grant registration without examination, to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, provided the requirements for registration in such other state are, in the opinion of the board, equivalent to the requirements herein provided. Every person licensed and registered under this act shall receive from the state board of pharmacy an appropriate certificate attesting the fact as it may be which certificate shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

Pharmacists or interns not required to be examined or to register anew under this act. Persons, who, at the time of the enactment of this law, hold certificates of registration as pharmacists, or interns, granted by the state board of pharmacy of this state, shall not be required to submit to examinations or to register anew under this law, but all such persons shall apply for and secure annual renewals of their present registration as provided in this act, and in all other respects be amenable to and governed by the provisions of this act and the rules and regulations of the board from time to time promulgated under this act.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R. C. M. 1921; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 168 and once by Ch. 241. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 168, Laws of 1971, deleted "at least twenty-one (21) years of age" from the first sentence in the paragraph headed "Qualifications for examination"; and made minor changes in phraseology and style.

Chapter 241, Laws of 1971, substituted "intern" for "assistant pharmacist" throughout the section; increased the examination fee from $15 to $25; inserted "registered pharmacist's" before "license" near the end of the first sentence of the paragraph headed "Qualifications for examination"; and substituted "complied with the internship requirements established by the state" for "at least one (1) year of practical experience in a pharmacy which has been approved by the" at the end of the first sentence of the paragraph headed "Qualifications for examination".

66-1507. (3177) **Annual renewal of registration fees.** Every person licensed and registered by the board shall annually pay to the board on or before the 30th day of June, a renewal of registration fee of fifteen dollars ($15). Any default in the payment of a renewal fee for a period of thirty days after the date the same is due shall increase the renewal registration fee to the sum of thirty dollars ($30). It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. The practice of pharmacy in the state of Montana is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. Every certificate and renewal shall expire at the time prescribed, not later than one (1) year from its date. A default in a renewal fee may be reinstated within one (1) year of such default without examination upon payment of the arrears.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971.

Amendments

The 1971 amendment, inserted "on or before the 30th day of June" in the first sentence; increased the renewal fee from $5 to $15; inserted the second sentence; and added the last sentence.

66-1508. Store license—certified pharmacy license—suspension or revocation. (a). * * * [Same as parent volume.]

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of the act. Upon presentation of evidence satisfactory to the board and upon application upon such form as the board may prescribe and upon the payment of an annual fee of twenty dollars ($20), the board shall license any pharmacy as a "CERTIFIED PHARMACY," provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or registered interns qualified as herein prescribed. Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy, to use the word pharmacy to identify his business or to use the word pharmacy in any advertising unless such license has been duly issued and is in full force and effect.

(c) The board may suspend, revoke or refuse to renew any store or pharmacy license obtained by false representation, or fraud of any character, or when the pharmacy for which the license shall have been issued is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom the license shall have been granted has been convicted for violation of any of the provisions of the act or for a felony, or convicted for any violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301-392 as from time to time revised, amended, and supplemented), or, if a natural person, whose pharmacist or intern license has been revoked, or when the store or pharmacy is conducted in violation of the provisions of this act.

Before any license can be revoked the holder thereof shall be entitled to a hearing by the board after reasonable notice, and judicial review of the action of the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsections (b) and (c); and made a minor change in style.

66-1509. Judicial review of acts of board. (a) Review by the district court of any order revoking either permanently or temporarily a license of any pharmacist or intern, or any store or pharmacy, or any order, decision or finding of the board shall be made by petition in writing filed with the clerk of the district court of the county wherein the pharmacist or intern, store or pharmacy, or other affected person or business was operating at the time of the revocation of any such license, or at the time of such order, decision or finding. The petition shall concisely state the facts and order complained against.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 175, L. 1939; amd. Sec. 7, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in two instances in subsection (a).

66-1521. (3202.10) **Attorney general to be attorney for state board of pharmacy—prosecutions—secretary to assist in enforcement—duties of county attorneys.** The attorney general of the state of Montana shall be the attorney for the Montana state board of pharmacy but said board may in its discretion employ other counsel. The secretary of the Montana state board of pharmacy shall, under such rules and regulations as the board may prescribe, assist the board and the attorney general or other counsel in the administration and enforcement of this act. It shall be the duty of the county attorney of any county wherein any offense hereunder is committed to prosecute the offender. The board, its secretary or the county attorney is authorized to examine the books of any manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern or pharmacy within the state for the purpose of acquiring information to aid in prosecutions hereunder.

History: En. Sec. 4, Ch. 104, L. 1931; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in the last sentence.

CHAPTER 16—PAWNBROKERS AND JUNK DEALERS—REGULATIONS

Section
66-1607. Penalties.

66-1607. (4192) **Penalties.** The penalties for a violation of any of the provisions of this chapter shall be a misdemeanor.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R. C. M. 1921; amd. Sec. 21, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "shall be a misdemeanor" for "are provided for in sections 94-3701 to 94-3704" at the end of the section.

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section
66-1819. Certificates of certified public accountants.
66-1820. Registration of public accountants.

66-1813. State board of public accountancy—membership.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(2).

66-1819. Certificates of certified public accountants. A certificate shall be issued by the board to any person:

(a) Who is (1) a citizen of the United States or who has duly declared his intention of becoming a citizen, (2) is a resident of this state or has a place of business herein or, as an employee, is regularly employed herein, and (3) is of good moral character;

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted from subdivision (a) a clause (3) reading "has attained the age of twenty-one (21) years" and redesignated former clause (a) (4) as (a)(3).

66-1820. Registration of public accountants. Registration as a public accountant shall be available to any person:

(a) Who is (1) a citizen of the United States or who has duly declared his intention of becoming a citizen, (2) is a resident of this state or has a place of business herein or, as an employee, is regularly employed herein, and (3) is of good moral character;

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted from subdivision (a) a clause (3) reading "has attained the age of twenty-one (21) years" and redesignated former clause (a)(4) as (a)(3).

CHAPTER 19—REAL ESTATE LICENSE ACT

Section
66-1929. Licenses—applicants for licenses.

66-1927. Real estate commission, etc.

Cross-References

Commission renamed and continued in department of professional and occupational licensing, sec. 82A-1602(23).

66-1928. Repealed.

Repeal

Section 66-1928 (Sec. 5, Ch. 250, L. 1963), relating to surplus funds of the commission in the earmarked revenue fund, was repealed by Sec. 1, Ch. 112, Laws 1973.

66-1929. Licenses—applicants for licenses. (a). * * * [Same as parent volume.]

(b) Each applicant for a broker's license shall be a citizen of the United States; shall be at least eighteen (18) years of age; shall have graduated from an accredited high school or shall have completed an equivalent education as determined by the commission; shall have been actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during such two (2) year period as determined by the commission, except that if the commission shall find that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the commission may waive this experience requirement; and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency.

(c) Each applicant for a salesman's license shall be at least eighteen (18) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or shall have completed an equivalent education as determined by the commission; and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in each of subsections (b) and (c) from 21 to 18 years.

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

66-2102. (4139.2) **Abstracters board of examiners.**

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(1).

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

Section

66-2204. Applications for license to practice—examinations—fees.

66-2201. (3217) **Appointment of state board, etc.**

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(24).

66-2204. (3220) **Applications for license to practice—examinations—fees.** Any citizen of the United States desiring to begin the practice of

veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars ($25), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica and therapeutics, livestock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars ($25), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the

same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted "who is over the age of twenty-one (21) years" following "citizen of the United States" at the beginning of the section; and made minor changes in style.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section
66-2326. Definitions.
66-2337. Application for registration—fees.
66-2344. Registration of persons registered by other states or authorities.

66-2326. Definitions. The term "engineer" as used in this act shall mean a professional engineer as hereinafter defined.

The term "professional engineer" within the meaning and intent of this act shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

The term "engineer-in-training" as used in this act shall mean a candidate for registration as a professional engineer who is a graduate in an engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or equivalent curricula as approved by the board, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects as provided in section 66-2338, and who shall have received from the board, as hereinafter defined, a certificate stating that he has successfully passed this portion of the professional examinations.

The term "practice of engineering" within the meaning and intent of this act shall mean any professional service or creative work requiring engineering education, training, and experience and the application of such special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, engineering planning service performed in connection with city, county, regional and state planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, and including such architectural work as is incidental to the practice of engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment, or communication lines or signal circuits, or electric power lines or pipelines.

The term "land surveyor" as used in this act shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of land surveying within the meaning and intent of this act includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof.

The term "board" as used in this act shall mean the state board of registration for professional engineers and land surveyors provided for by this act.

History: En. Sec. 3, Ch. 150, L. 1957; amd. Sec. 1, Ch. 282, L. 1969; amd. Sec. 1, Ch. 364, L. 1971.

Amendments

The 1971 amendment inserted "engineering planning service performed in connection with city, county, regional and state planning" in the paragraph defining practice of engineering.

66-2327. Board—members—term.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(11).

66-2337. Application for registration—fees. Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

The registration fee for professional engineers shall be thirty-five dollars ($35), twenty dollars ($20) of which shall accompany application, the remaining fifteen dollars ($15) to be paid upon issuance of certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be twenty dollars ($20).

The fee for engineer-in-training shall be twenty dollars ($20), which shall accompany the application and shall include the cost of examination and issuance of certificate. When certification as an engineer-in-training by another state, or any territory or possession of the United States or any county [country], is accepted as evidence of qualification, the fee for engineer-in-training in Montana shall be five dollars ($5). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of fifteen dollars ($15) shall be paid before issuance of certificate as a professional engineer.

The registration fee for land surveyors shall be thirty-five dollars ($35), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor shall be fifty dollars ($50), thirty-five dollars ($35) of which shall accompany the application, the remaining fifteen dollars ($15) to be paid upon issuance of certificate.

Should the board deny the issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "country" in the second sentence of the third paragraph.

Amendments

The 1971 amendment increased all the fees prescribed by this section.

66-2344. Registration of persons registered by other states or authorities. The board may, upon application therefor, and the payment of a fee of twenty dollars ($20), issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the national bureau of engineering registration, or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of this act and the rules established by the board.

History: En. Sec. 21, Ch. 150, L. 1957; amd. Sec. 8, Ch. 282, L. 1969; amd. Sec. 3, Ch. 364, L. 1971.

Amendments

The 1971 amendment increased the registration fee from $10 to $20.

Repealing Clause

Section 4 of Ch. 364, Laws 1971 repealed all acts and parts of acts in conflict therewith.

CHAPTER 24—PLUMBERS

Section
66-2426. Exceptions from act.

66-2403. Board of plumbing examiners, etc.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(22).

Representative of board of health replaced on board, sec. 82A-1606(2).

66-2426. Exceptions from act. This act shall not be construed to apply to, or to affect, installation of water conditioner services in private dwellings or plumbing installations in any mines, mills, smelters, refineries, reduction works, public utilities, manufacturing industries, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973.

Amendments

The 1973 amendment inserted the exemption of installation of water conditioner services in private dwellings.

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section
66-2502. Qualifications of applicants for license.

66-2502. Qualifications of applicants for license. To be eligible for a license from the board as a physical therapist an applicant must:

(1) Be of good moral character;

(2) Have been graduated from a school of physical therapy approved by the council of medical education and hospitals of the American Medical Association;

(3) Either (a) pass to the satisfaction of the board an examination conducted by it to determine his fitness for practice as a physical therapist; or, (b) be entitled to a license without examination as provided by section 66-2505 or 66-2506.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted a former subdivision (1) reading "Be at least twenty-one years old"; and redesignated former subdivisions (2) to (4), inclusive, as subdivisions (1) to (3), inclusive.

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

Section
66-2604. Water well contractor's examining board—members—terms—oath—seal—employees.

66-2604. Water well contractor's examining board—members—terms—oath—seal—employees. (1) and (2). * * * [Same as parent volume.]

(3) The appointive member of the board shall, upon entering on the duties of his office, take and subscribe to the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state of the state of Montana.

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "section 1, article XIX, of" before "the constitution" in subsection (3).

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(26).

State engineer and director of environmental sanitation replaced on board, sec. 82A-1606(4).

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

Section
66-2708. Embalming and mortuary science—qualifications for mortician's license.

66-2702. State board of morticians—appointment and term of office.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(16).

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be of good moral character.

(2) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited

college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(3) Pass an examination prescribed by the board.

(4) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971.

Amendments

The 1971 amendment deleted a former subdivision (1) reading "Be at least twenty-one (21) years of age"; and redesignated former subdivisions (2) to (5), inclusive, as subdivisions (1) to (4), inclusive.

CHAPTER 28—ELECTRICAL SAFETY LAW

Section
66-2802. Purpose.
66-2804. Board of electricians.
66-2812. Exemptions.

66-2802. Purpose. (1) The purpose of this act is to protect the health and safety of the people of Montana from the danger of electrically caused shocks, fires and explosions and to protect property from the hazard of electrically caused fires and explosions, and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that persons making electrical installations are qualified, and that the electrical installations and electrical products made and sold within this state meet minimum safety standards. From and after the taking effect of this act, all installations in the state of Montana of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to such work as far as the same covers both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the board. The standards as set forth in such National Electrical Code shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of a majority of all appointed members of the board of electricians shall be required to set any standards that are more stringent than those set forth in the National Electrical Code.

(2) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973.

Amendments

The 1973 amendment added the last two sentences to subsection (1).

Cross-References

Board functions transferred to department of law enforcement and public safety, sec. 82A-1203(1).

66-2804. Board of electricians. There is hereby established a board of electricians. The board of electricians shall consist of five (5) members,

appointed by the governor, with the consent of the senate, who shall be residents of the state of Montana. One (1) member of the board shall represent the public. One (1) member of the board shall be selected from each of the following four (4) groups, each of which will be selected from three (3) names submitted by each of the following groups:

(1) consumer members of rural electric co-operatives;

(2) master licensed electrical contractor;

(3) licensed journeyman electricians; and

(4) investor-owned electric utilities.

The members of the board shall be appointed within twenty (20) days after the effective date of this act for one (1), two (2), three (3), four (4) and five (5) years, respectively, as determined by the governor. Thereafter, the members of the board shall serve for a term of five (5) years with their terms of office so arranged that one (1) term and only one (1) term shall expire on July 1 of each year.

Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member. Each member of the board shall receive twenty-five dollars ($25) per day for each day served in the discharge of his duties, together with the actual and necessary expenses incurred in the performance of his duties, all to be paid out of the electricians' fund herein created. A majority of the members of the board of electricians shall constitute a quorum for transaction of business.

History: En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973.

Amendments

The 1973 amendment corrected the name of the board; increased its size from three to five members by adding the representatives listed in clauses (1) and (4); inserted the provision for submission of names by groups represented; extended the normal term of office from three to five years; inserted the provision for a $25 per diem; added the final sentence, defining a quorum; and made numerous minor changes in phraseology and style.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(10).

66-2806. Electrician must have license.

Cross-References

Board functions transferred to department of law enforcement and public safety, sec. 82A-1203(1).

66-2812. Exemptions. (a) Nothing in this act shall be deemed to apply to the installation, alteration or repair of electrical signal or communications equipment owned or operated by a public utility or a city. The licensing or inspection provisions of this act shall not apply to persons making electrical installations on their own property or to regularly employed maintenance electricians working on the premises of their employer or to regularly employed maintenance electricians.

(b) Nothing in the article shall be construed to require any individual to hold a license before doing electrical work on his own property or residence, provided that said property or residence is maintained for his own use.

(c) to (f). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973.

Amendments

The 1973 amendment substituted "alteration or repair of electrical signal or communications equipment owned or operated by public utility or city" for "maintenance of communication circuits, wires and apparatus" in the first sentence of subsection (a); deleted "nor to any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system" at the end of the first sentence in subsection (a); inserted "or inspection" near the beginning of the second sentence in subsection (a); inserted "or to regularly employed maintenance electricians" at the end of the second sentence in subsection (a); and inserted "or residence, provided that said property or residence is maintained for his own use" at the end of subsection (b).

CHAPTER 29—MASSEURS—REGULATION AND LICENSING

Section
66-2904. Organization of board—meetings—powers and duties.

66-2903. State board of massage examiners, etc.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(14).

66-2904. Organization of board—meetings—powers and duties. The board shall convene after each appointment and elect a president, a vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting in each year, at the city of Helena, Montana, and shall hold special meetings at such times and places as the board, or a majority of the membership thereof, may designate; provided, that not more than four (4) meetings shall be held in any one (1) year. A majority of the board shall constitute a quorum.

The board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of massage training. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

A license to engage as a masseur within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act.

History: En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973.

Amendments

The 1973 amendment deleted "within thirty (30) days" following "shall convene" in the first paragraph; substituted "each appointment" for "their appointment" in the first paragraph; deleted "and thereafter annually elect," following "elect" in the first paragraph; deleted "on the second Friday of January" following "regular meeting" in the second paragraph; and made minor changes in phraseology.

CHAPTER 30—HEARING AID DISPENSERS

66-3002. Board of hearing aid dispensers created.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(12).

CHAPTER 31—NURSING HOME ADMINISTRATORS

Section
66-3101. Definitions.
66-3102. Composition of the board.
66-3103. Qualifications for licensure.
66-3104. Registration and licensing function.
66-3105. Fees.
66-3109. Duties of the board.
66-3110. Renewal of registration and license.
66-3112. Misdemeanor.

66-3101. Definitions. For the purposes of this act, and as used herein:

(a) The term "board" means the board of nursing home administrators hereinafter created.

(b) The term "nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether such individual has an ownership interest in such facility, and whether his functions and duties are shared with one or more individuals.

(c) The term "long-term care facility" means any skilled nursing facility, nursing home or intermediate care facility — A as defined for licensing purpose under state law or pursuant to the rules and regulations for long-term care facilities by the department of health and environmental sciences, whether proprietary or nonprofit, including but not limited to, such facilities owned or administered by the state government or an agency or political subdivision thereof.

(d) The term "inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator, and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973.

Amendments

The 1973 amendment corrected the names of the board of administrators and of the department of health and environmental sciences; substituted references to long-term care facilities for references to extended care facilities and nursing homes throughout the section; substituted "any skilled nursing facility, nursing home or intermediate care facility — A as defined" near the beginning of subdivision (c) for "any institution or facility defined as such"; added subdivision (d); and made minor changes in phraseology.

66-3102. Composition of the board. There is hereby created the board of nursing home administrators which shall consist of five (5) voting members. No more than two (2) of these members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients, but no two (2) of the latter shall be from the same profession and none may have a financial interest in any nursing home. The

director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, shall serve ex officio without the power to vote as members of such board. The terms of all appointive members shall be three (3) years, and they shall serve staggered terms with no more than two (2) terms expiring each year. The appointees shall be selected from a list of three (3) nominees submitted for each appointee, to the governor by the board of directors of the Montana nursing home association, inc.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term, from a list of three (3) names submitted to the governor by the board of directors of the Montana nursing home association, inc. Appointive members may be removed by the governor for cause after due notice and hearing. No person shall be eligible for appointment as a nursing home administrator member unless he is the holder of a license as a nursing home administrator.

History: En. Sec. 2, Ch. 363, L. 1969; amd. Sec. 1, Ch. 434, L. 1973; amd. Sec. 2, Ch. 483, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 434 and once by Ch. 483. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 434, Laws of 1973, corrected the name of the board of administrators; inserted "voting" before "members" at the end of the first sentence of the first paragraph; inserted the second and third sentences in the first paragraph; substituted "director of the department of health and environmental sciences" and "director of the department of social and rehabilitation services" in the fourth sentence of the first paragraph for "executive officer of the Montana state department of health" and "administrator of the Montana state department of public welfare"; deleted from the first paragraph a sentence relating to nominations for the initial appointments to the board and clauses relating to terms of office of the first appointees; added to the fifth sentence in the first paragraph the clause relating to staggered terms; deleted from the second paragraph a third sentence relating to qualifications of the first appointees; deleted "After initial appointments have been made" at the beginning of the final sentence of the second paragraph; and inserted "nursing home administrator" before "member" in the final sentence of the second paragraph.

Chapter 483, Laws of 1973, made the same changes as did Chapter 434, except that it did not delete the clauses relating to terms of office of the first appointees and did not add the clause relating to staggered terms.

Effective Date

Section 2 of Ch. 434, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(17).

Executive officer of department of health and administrator of department of public welfare replaced on board, sec. 82A-1606(1).

66-3103. Qualifications for licensure. The board shall have authority to register and issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless:

(a) He is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and

(b) Has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content

and so administered as to present sufficient knowledge of the needs properly to be served by long-term care facilities; laws governing the operation of long-term care facilities and the protection of the interests of patients therein; and the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a long-term care facility; and

(c). * * * [Same as parent volume.]

Provided, however, that the minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act, as amended, 1967 (P.L. 90-248).

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973.

Amendments

The 1971 amendment deleted "at least twenty-one (21) years of age" from subdivision (a).

The 1973 amendment inserted references to registration in two places in the preliminary paragraph; added to subdivision (a) the requirement for a high-school diploma or equivalent; substituted references to long-term care facilities for references to nursing homes in three places in subdivision (b); deleted from the final proviso three temporary and obsolete sentences relating to temporary waivers for administrators serving before the date of the act; and made minor changes in phraseology.

66-3104. Registration and licensing function. (a) The board shall register and license nursing home administrators in accordance with rules and regulations issued, and from time to time revised by it. A nursing home administrator's registration and license shall not be transferable and shall be valid until surrendered for cancellation or suspended or revoked for violation of this act or any other laws or regulations relating to the proper administration and management of a long-term care facility. Denial of issuance or renewal, suspension or revocation under any section of this act shall be subject to review by the board upon the timely written request for review within thirty (30) days.

(b) If the board determines that preliminary qualifications set forth in 66-3103 (a) and (b) of this act, will have been met before the next examination it may issue a temporary permit for a period of one hundred eighty (180) days or until the scores of the next subsequent examination are announced. No temporary permit shall be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973.

Amendments

The 1973 amendment inserted references to registration in the first and second sentences in subsection (a); substituted "long-term care facility" for "nursing home" at the end of the second sentence in subsection (a); substituted "will have been met before the next examination" for "have been met before examination" in the first sentence of subsection (b); substituted "the scores of the next subsequent examination are announced" at the end of the first sentence of subsection (b) for "the date of the next subsequent examination, whichever is earlier"; and made a minor change in phraseology.

66-3105. Fees. (a) and (b). * * * [Same as parent volume.]

(c) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount of not more than twenty-five dollars ($25). An inactive registration shall expire on December

31, in the year for which it is issued, and shall be renewable annually upon timely payment of the inactive registration fee.

(d) The fee for issuing a duplicate license shall be ten dollars ($10).

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973.

Amendments

The 1973 amendment added subsections (c) and (d).

66-3109. Duties of the board. The board shall have the duty and responsibility to:

(a) Develop, impose and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators shall be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

(b). * * * [Same as parent volume.]

(c) Register and issue licenses to individuals, after application of such techniques, determined to meet such standards, and for cause, after due notice and hearing, to revoke or suspend licenses previously issued by the board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards. Provided, however, the board may, in its discretion, defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for such continuity of care outweighs any harm or danger which might result from the failure of such nursing home administrator to be registered and licensed thereby resulting in the necessary closure of a long-term care facility.

(d) Establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

(e). * * * [Same as parent volume.]

(f) Conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to nursing home administrators.

(g) Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this act, and make provisions for the conduct of such courses and their accessibility to residents of this state, unless it finds that there are sufficient number of courses conducted by others within this state to meet the needs of the state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this act.

(h) Prescribe or approve continuing education courses.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973.

Amendments

The 1973 amendment inserted references to registration in subdivisions (a), (c) and (d); substituted "long-term care facility" for "nursing home" at the end of subdivision (c); added subdivision (h); and made minor changes in phraseology and punctuation.

66-3110. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year, prior to the expiration of his currently valid registration and license on December 31. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board, however, if the board finds after due notice and hearing, that the applicant has acted or failed to act in such a manner, or under circumstances, as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973.

Amendments

The 1973 amendment inserted references to registration; inserted the proviso relating to continuing education; and made minor changes in phraseology.

66-3112. Misdemeanor. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this act. A person who violates the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973.

Amendments

The 1973 amendment deleted "and constitute a misdemeanor" following "It shall be unlawful" at the beginning of the first sentence; inserted "registration and" in the middle of the first sentence; and added the second sentence.

Repealing Clause

Section 9 of Ch. 483, Laws 1973 read "Section 66-3113, R. C. M. 1947, is repealed."

66-3113. Repealed.

Repeal

Section 66-3113 (Sec. 13, Ch. 363, L. 1969), relating to local license taxes, was repealed by Sec. 9, Ch. 483, Laws 1973.

CHAPTER 32—PSYCHOLOGISTS—LICENSING AND REGULATION

Section

66-3201. Legislative finding and purpose.
66-3202. Definitions.
66-3203. License required to practice psychology—exempt activities.
66-3204. Creation of board of examiners.
66-3205. Duties of board.
66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists.
66-3207. Additional powers and duties of board.

66-3208. Qualifications and requirements for licensure—reciprocity.
66-3209. Grounds for refusal or revocation of license.
66-3210. Notice and hearing required on refusal or revocation of license—procedure for judicial relief.
66-3211. Fees.
66-3212. Confidential relationship between psychologist and client.
66-3213. Penalties for violation of act.
66-3214. Injunction of unlawful practice—restrictions on scope of practice.

66-3201. Legislative finding and purpose. The legislative assembly finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971.

Title of Act

An act providing for the licensing and regulation of persons in Montana representing themseleves as psychologists, and creating a state board of psychologist examiners, prescribing its powers and duties, and providing penalties for violations.

66-3202. Definitions. As used in this act:

(1) "Accredited college or university" means any college or university accredited by the regional accrediting association for institutions of higher learning, such as the Northwest Association of Secondary and Higher Schools.

(2) "Board" means the state board of psychologist examiners.

(3) A person represents himself to be a "psychologist" when he holds himself out to the public by any title or description of services incorporating the words psychologist, psychological, psychologic, or psychology and offers to render or renders such psychological services defined in subsection (4) of this section to individuals, groups, corporations, or the public for compensation or fee.

(4) "Practice of psychology" shall mean the application of principles, methods and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, motions, and interpersonal relationship; the methods and procedures of interviewing, counseling and behavior modification including psychotherapeutic techniques and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions and motivation.

History: En. Sec. 2, Ch. 73, L. 1971.

66-3203. License required to practice psychology—exempt activities. (1) After January 1, 1972, no person may represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this act.

(2) Nothing in this act shall be construed to prevent:

(a) Qualified members of other professions such as, but not limited to, physicians, social workers, lawyers, pastoral counselors or educators, from doing work of a psychological nature consistent with their training and

the codes of ethics of their respective professions if they do not hold themselves out to the public by any title or description incorporating the words "psychology" or "psychologist."

(b) The activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or of other political subdivisions, or a duly charged educational or charitable institution in so far as such activities and services are a part of the duties of his office, or position with such agency or institution.

(c) The activities and services of a student, intern, or resident in psychology, pursuing a course of study at an accredited university or college, or working in a generally recognized training center, if these activities and services constitute a part of his supervised course of study.

(d) The activities and services of a person who is not a resident of this state, in rendering consulting psychological services in Montana when these services are rendered for a period which does not exceed in the aggregate more than sixty (60) days during any calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; provided that such persons shall report to the board the nature and extent of such services in this state if they exceed ten (10) days within any calendar year.

(e) A person authorized by the laws of the state or country of his former residence to perform such activities and services, who has recently become a resident of this state, and who has applied for licensure in Montana, pending disposition of his application.

(f) The use of the term "social psychologist" by any person who:

(i) Has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution and, who

(ii) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology and, who

(iii) has filed with the board a statement of facts demonstrating his compliance with this subdivision.

(g) The offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment.

(h) Activities of a psychological nature on the part of persons who are salaried employees of accredited academic institutions, governmental agencies, research laboratories, and business corporations, provided such employees are performing those duties for which they are employed by such organizations, and within the confines of such organization.

History: En. Sec. 3, Ch. 73, L. 1971.

66-3204. Creation of board of examiners. The state board of psychologist examiners is established to administer this act.

(1) The board shall consist of three psychologists who shall be appointed by the governor within ninety (90) days after this act takes effect. The governor shall select his appointees for this first board from a list

submitted to him by the Montana Psychological Association, consisting of the names of all members of the Montana Psychological Association who are currently certified by its board of examiners and who are also members of the American Psychological Association and who hold the Ph.D. degree.

(2) The members of the first board shall serve the following terms: one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years. Thereafter, at the expiration of the term of each member, the governor shall appoint his successor for a term of three (3) years from the list of licensed psychologists.

(3) Before entering upon the duties of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Each member of the board first appointed under this act shall be issued a license upon payment of the appropriate fee.

(4) No member of the board may be appointed to succeed himself, but any member may be reappointed after a period of three (3) years following the termination of a previous appointment.

(5) Each member of the board shall be a citizen of the United States and a resident of Montana.

(6) Any vacancy in the membership of the board occurring other than by expiration of term, shall be filled by appointment by the governor for the unexpired term, from a current list similar to the one submitted to him under subsection (2) hereof.

History: En. Sec. 4, Ch. 73, L. 1971.

Executive Reorganization

Acting pursuant to section 82A-115, the governor allocated the board of psychologist examiners to the department of professional and occupational licensing for administrative purposes only, as prescribed in section 82A-108, by Executive Reorganization Order 2-72, signed on July 31, 1972 and effective August 1, 1972.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

66-3205. Duties of board. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. The secretary of the board shall keep a record of its proceedings. Other regular meetings shall be held at such times as the rules of the board may provide. Special meetings may be held at such times as may be deemed necessary or advisable by the chairman and the majority of its members, or upon the request of the governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. The quorum of the board shall consist of the majority of its members.

(2) The board may employ such other persons as it deems necessary or desirable to carry out the provisions of this act, all of whom shall receive such compensation as may be fixed in the budget from time to time.

(3) Each board member shall receive actual necessary traveling and subsistence expenses incidental to board meetings as provided for in the statutes.

(4) The board may make all rules which are reasonable and necessary

for the proper performance of its duties and for the regulation of proceedings before it, and which are not inconsistent with the constitution or the laws of this state.

(5) The board shall prepare a report to the governor as required by law.

(6) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(7) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971.

66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists. (1) The board shall administer examinations to qualified applicants for licensing at least once a year. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be re-examined at subsequent examination upon the payment of another examination fee. An applicant who fails two (2) successive examinations may apply for re-examination after two (2) years of additional professional experience or training.

(3) The board shall issue a license to each person who meets the requirements for licensure as prescribed in this act. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

(4) The license shall expire on January 1 following the date of its issuance or renewal and is invalid thereafter. The board shall notify each person licensed under this act relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least one (1) month before the expiration of the license.

(5) Renewal may be made at any time during the sixty (60) days prior to the expiration date by application therefor. Failure on the part of any person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten per cent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee. Application for renewal following a lapse of one (1) year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) The board shall publish yearly a list of all psychologists licensed under this act. This list shall contain names and addresses and such other information as the board deems advisable. The board shall mail a copy of this list to each person licensed under this act, place a copy on

file in the secretary of state's office, and furnish copies to the public, upon request.

History: En. Sec. 6, Ch. 73, L. 1971.

66-3207. Additional powers and duties of board. (1) In addition to the other powers and duties set forth, the board may:

(a) Revoke and suspend licenses.

(b) Conduct hearings upon complaints concerning persons licensed under this act.

(c) Cause the prosecution and enjoinder of all persons violating this act, by the complaint of its secretary signed with the county attorney, in the county where the violation took place, and incur necessary expenses therefor.

(d) Study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: En. Sec. 7, Ch. 73, L. 1971.

66-3208. Qualifications and requirements for licensure—reciprocity. (1) Application for examination for licensing a psychologist shall be made upon forms prescribed by the board.

(2) Prior to January 1, 1973, the board shall license as a psychologist any person who pays the prescribed fee, and who submits evidence by oath that he:

(a) Is a resident of or shows satisfactory evidence of intent to become a resident of Montana at the time he is licensed.

(b) Is at least (18) years of age.

(c) Is of good moral character.

(d) Has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program.

(e) Shall have completed at the time of application a minimum of two (2) years of experience in the practice, research or teaching of psychology. One (1) year of such experience shall be post-doctoral.

(3) After January 1, 1973, all applicants must meet the requirements set forth in subsection (2) of this section and shall pass an examination administered by the board.

(4) Prior to January 1, 1973, a license may be issued to an individual who has been a resident of the state for at least one (1) year and who holds a master's degree from an accredited college or university based on a program which is primarily psychological, and in addition has had five (5) years of professional experience satisfactory to the board, provided he has met the requirements of paragraphs (a), (b) and (c) of subsection (2) of this section.

(5) A license without examination may be issued by the board to any psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the require-

ments of this act, or to any psychologist who is a diplomate in good standing of the American board of professional psychology.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the age specified in subdivision (2) (b) from twenty-one to eighteen years.

66-3209. Grounds for refusal or revocation of license. (1) A license applied for, or issued under this act, may be refused or revoked by the board upon proof that the person to whom the license was issued:

(a) Has been convicted of a felony;

(b) Has been guilty of fraud or deceit in securing the license or any renewal thereof; or

(c) Is using any narcotic or any alcoholic beverage to an extent that such use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) Has been guilty of unprofessional conduct as defined by the code of ethics published by the American Psychological Association.

History: En. Sec. 9, Ch. 73, L. 1971.

66-3210. Notice and hearing required on refusal or revocation of license—procedure for judicial relief. (1) The board may not refuse to issue or renew or revoke the license of any person for any cause other than failure to pay fees unless the person has been given at least thirty (30) days' notice in writing by certified mail of the charges against him and a hearing by the board. The written notice shall be mailed to the person's last known address. Upon such hearing, the board may administer oaths and procure by subpoena the attendance of witnesses and the production of relevant books and papers.

(a) Any action of, or ruling or order made or entered by the board declining to issue a certificate to, or declining to recommend licensure of any person shall be subject to judicial review in the manner hereinafter provided. The review shall be in the district court in and for the county in which the board's action was taken.

(b) A person seeking judicial review shall, within thirty (30) days after the board's action, serve upon the secretary of the board a written notice of appeal for review stating the grounds of appeal. At the same time, such persons shall file in the office of the secretary of the board an appeal bond in an amount not to exceed three hundred dollars ($300), with good and sufficient surety to be approved by the secretary. The bond shall run to the state of Montana for the benefit of the board, conditioned for the speedy prosecution of the appeal and the payment of such costs on appeal as may be charged against the party appealing.

(c) The secretary of the board, within ten (10) days after receipt of notice of appeal and the filing and approval of the appeal bond, shall transmit to the clerk of the district court to which the appeal is taken, a copy certified under the seal of the board all of the files of the board concerning the proceedings before the board together with the appeal bond. The district court may award costs to the prevailing party on appeal.

(d) The clerk of such court shall thereupon docket such appeal and it shall be tried de novo as any other action.

(e) Either party may appeal from the judgment of the district court to the supreme court in the same manner as civil actions may be appealed.

(f) In cases of revocation or suspension, the action of the board shall be stayed from the date of approval of the appeal bond until final determination of the appeal.

History: En. Sec. 10, Ch. 73, L. 1971.

66-3211. Fees. (1) The board shall collect the following fees none of which is refundable:

(a)	Application fee	$25.00
(b)	Examination fee	$15.00
(c)	Certificate fee	$10.00
(d)	Renewal fee	$20.00 to $50.00

The board is hereby empowered to set the annual renewal fee annually within the above limits.

(2) The initial certificate fee shall be prorated as follows:

If the certificate is issued between January 2 and March 31 .....$10.00
If the certificate is issued between April 1 and June 30 .....$ 7.50
If the certificate is issued between July 1 and September 30 .....$ 5.00
If the certificate is issued between October 1 and January 1 .....$ 2.50

(3) Renewal certificates shall be secured annually and dated January 2.

(4) All moneys received by the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the board.

History: En. Sec. 11, Ch. 73, L. 1971.

66-3212. Confidential relationship between psychologist and client. (1) The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in this act or any other shall be construed to require such privileged communications to be disclosed.

History: En. Sec. 12, Ch. 73, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

66-3213. Penalties for violation of act. (1) Any person who violates any of the provisions of this act shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars ($500), or by both.

History: En. Sec. 13, Ch. 73, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

66-3214. Injunction of unlawful practice—restrictions on scope of practice. (1) The practice of psychology in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such

cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

(2) Nothing in this act shall be construed as permitting psychologists to prescribe drugs, perform surgery or administer electro-convulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971.

Separability Clause

Section 15 of Ch. 73, Laws 1971 read: "(1) If any provision of this act, or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

TITLE 67—PROPERTY

Chapter
16. Transfer of real property—method and effect, 67-1602.1.
18. Uniform gifts to minors act, 67-1801, 67-1804, 67-1807.
22. Disposition of unclaimed property, 67-2211 to 67-2226.
23. Unit Ownership Act, 67-2302 to 67-2303.6, 67-2304, 67-2305, 67-2314, 67-2317 to 67-2319, 67-2322, 67-2323, 67-2340, 67-2342 to 67-2344.

CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

67-208. (6668) Land.

Improvements on Land

Special assessments for flood control purposes under section 89-2330 are limited to land, exclusive of improvements. In re West Great Falls Flood Control & Drainage Dist., — M —, 496 P 2d 1143.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-305. (6677) When qualified.

Acquisition of Property

Where family-owned dairy farm corporation sold its lessors' interest in half of its herd to third party who then leased cattle back to corporation, the corporation, to the extent of the lease agreement, continued to own the cattle and, as long as operation of dairy farm was uninterrupted and not abandoned, there was no "acquisition" of the farm under milk control board regulations. Medo-Land Dairies v. Montana Milk Control Board, 157 M 215, 483 P 2d 705.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

67-808. Restriction on liability to gratuitous licensee for recreation.

Government Licensee

Notwithstanding that the agreement between power company and United States government used word "licensee," power company qualified as "landowner or tenant," as used in this section, since legal effect of instrument was to create lease; therefore, power company could properly use this section as an affirmative defense in personal injury action. State ex rel. Tucker v. District Court, 155 M 202, 468 P 2d 773.

Property

In action for personal injuries resulting from fall from private train being operated on defendant's property, trial court properly overruled plaintiff's motion to strike affirmative defense based on this section on ground that this section applies only to injuries caused by real estate, since, under section 19-103, "property," as used in this section, includes both real and personal property. State ex rel. Tucker v. District Court, 155 M 202, 468 P 2d 773.

CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION

67-1511. (6845) Delivery to grantee is necessarily absolute.

Unconditional Delivery and Acceptance

Informal written instrument, indicating that donor wished to pay money on demand but that it could be collected against his estate if not demanded or paid sooner, was unconditionally delivered and accepted when accepted by donee, even though no demand for payment was made during donor's lifetime. Faith Lutheran Retirement Home v. Veis, 156 M 38, 473 P 2d 503.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section
67-1602.1. Joint tenancy created by direct conveyance.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971.

Amendments

The 1971 amendment added the second paragraph, validating all joint tenancies created by direct conveyance prior to July 1, 1963.

67-1607. (6865) **What easements pass with property.**

Implied Easement

Ample room for alternative ingress and egress to contiguous county road precluded finding of implied easement on conveyance of part of a tract, in spite of permissive use of access road by several succeeding property owners for twenty-four years. Poepping v. Neil, — M —, 499 P 2d 319.

CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

Section
67-1801. Definitions.
67-1804. Duties and powers of custodian.
67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.

67-1801. Definitions. In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of eighteen (18) years.

(b) to (e). * * * [Same as parent volume.]

(f) A "custodian" is a person so designated in a manner prescribed in this act; the term includes a successor custodian.

(g) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal laws or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state; a "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state: an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(h) to (l). * * * [Same as parent volume.]

(m) A "minor" is a person who has not attained the age of eighteen (18) years.

(n) to (p). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967; amd. Sec. 11, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivisions (a) and (m) from 21 to 18 years, and made minor changes in punctuation.

67-1804. Duties and powers of custodian. (a) to (c). * * * [Same as parent volume.]

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen (18) years, or if the minor dies before attaining the age of eighteen (18) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) to (j). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967; amd. Sec. 12, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian. (a). * * * [Same as parent volume.]

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for ..... (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(2). * * * [Same as parent volume.]

(c). * * * [Same as parent volume.]

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of eighteen (18) years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) and (f). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967; amd. Sec. 13, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

Compiler's Notes

The compiler has inserted the bracketed word in subdivision (b)(1).

CHAPTER 19—PRINCIPAL AND INCOME ACT

67-1901. Definitions.

NOTE.—Uniform State Law. The following states have adopted a Revised Uniform Principal and Income Act: California, Indiana, Kansas, Minnesota, Mississippi, Nevada, New Mexico, North Dakota.

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

Section
67-2211. Report of abandoned property.
67-2212. Notice and publication of lists of abandoned property.
67-2213. Payment or delivery of abandoned property.
67-2214. Relief from liability by payment or delivery.
67-2215. Income accruing after payment or delivery.
67-2216. Periods of limitation not a bar.
67-2217. Sale of abandoned property.
67-2218. Deposit of moneys.
67-2219. Claim for abandoned property paid or delivered.
67-2220. Determination of claims.
67-2221. Judicial action upon determinations.
67-2222. Election to take payment or delivery.
67-2223. Examination of records.
67-2224. Proceeding to compel delivery of abandoned property.
67-2225. Penalties.
67-2226. Rules and regulations.

67-2201. Definitions and use of terms.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the "Uniform Disposition of Unclaimed Property Act": Minnesota, Nebraska, Rhode Island, Vermont and Wisconsin.

67-2206. Property of business associations, etc.

Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro rata share of unpaid dividends would become abandoned property and subject to escheat to state two years after final distribution of assets. Barnes-King Development Co. v. Corette, 156 M 202, 478 P 2d 868.

67-2211. Report of abandoned property. (a) Every person holding moneys or other property, tangible or intangible, presumed abandoned under this act shall report to the state department of revenue with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1). * * * [Same as parent volume.]

(2) In case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) and (4). * * * [Same as parent volume.]

(5) Other information which the state department of revenue prescribes by rule as necessary for the administration of this act.

(c). * * * [Same as parent volume.]

(d) The report shall be filed before November 1 every three (3) years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations and co-operatives, shall be filed

before May 1 of each year as of December 31 next preceding. The state department of revenue may request that any other reports be filed each year. The state department of revenue may postpone the reporting date upon written request by any person required to file a report. The state department of revenue shall furnish forms for this report.

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971; amd. Sec. 24, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "moneys" for "funds" in subsection (a) and in subdivision (b)(2); and substituted "state board of equalization" for "state treasurer" in subsection (a), in subdivision (b)(5), and in three places in subsection (d).

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 67-2211, the state department of revenue shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1). * * * [Same as parent volume.]

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state department of revenue.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state department of revenue to whom all further claims must thereafter be directed.

(c) The state department of revenue is not required to publish in such notice any item of less than twenty-five dollars ($25) unless the department deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 67-2211, the state department of revenue shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state department of revenue, property is being held to which the addressee appears entitled.

(2). * * * [Same as parent volume.]

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state department of revenue to whom all further claims must be directed.

(f). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in the first sentence of subsection (a), at the end of subdivision (b)(2), near the end of subdivision (b)(3), in two places in subsection (c), in subsection (d), and in subdivisions (e)(1) and (e)(3).

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 67-2211 shall within twenty (20) days after the time specified in section 67-2212 for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 67-2202 within twenty (20) days after the filing of the report, pay or deliver to the state department of revenue all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 67-2212, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state department of revenue, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967: amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" in two places.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the state department of revenue under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state department of revenue pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state department of revenue shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state department of revenue pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof

thereof and upon proof that the state department of revenue was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state department of revenue shall refund to such holder the amount of such second payment not in excess of the amount paid to the state department of revenue under this act.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" in eight places.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state department of revenue under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963; amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer."

The 1973 amendment substituted "department of revenue" for "board of equalization."

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state department of revenue.

History: En. Sec. 16, Ch. 244, L. 1963; amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" at the end of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state department of revenue under this act shall within one (1) year after the delivery be sold by the department to the highest bidder at public sale in whatever city in the state affords in the department's judgment the most favorable market for the property involved. The state department of revenue may decline highest bid and reoffer the property for sale if the department considers the price bid insufficient. The department need not offer any property for sale if, in the department's opinion, the probable cost of sale exceeds the value of the property.

(b). * * * [Same as parent volume.]

(c) The purchaser at any sale conducted by the state department of revenue pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state department of revenue shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in seven places in subsection (a) and in two places in subsection (c).

The 1973 amendment substituted "department of revenue" for "board of equalization" and "department" for "board" throughout the section.

67-2218. Deposit of moneys. (a) All moneys received under this act, including the proceeds from the sale of abandoned property under section 67-2217, shall forthwith be deposited by the state department of revenue with the state treasurer for credit to the trust and legacy fund, public school account of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars ($25,000) from which he shall make prompt payment of claims allowed by the department as hereinafter provided. Before making the deposit the state department of revenue shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school account, the state department of revenue may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "All moneys" for "All funds" at the beginning of subsection (a); substituted references to the state board of equalization for references to the state treasurer in three places in subsection (a) and in one place in subsection (b); substituted "with the state treasurer for credit to the trust and legacy fund, public school account" in the first sentence of subsection (a) for "in the public school fund"; and substituted "public school account" for "public school fund" in subsection (b).

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state department of revenue.

History: En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" at the end of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

67-2220. Determination of claims. (a) The state department of revenue shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held the department shall prepare a finding and a decision in writing on each claim filed, stating

the substance of any evidence heard by the department and the reasons for the department's decision. The decision shall be a public record.

(b) If the claim is allowed, the state department of revenue shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in four places in subsection (a) and in one place in subsection (b).

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

67-2221. Judicial action upon determinations. Any person aggrieved by a decision of the state department of revenue or as to whose claim the department has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state department of revenue or within one hundred eighty (180) days from the filing of the claim if the department fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in four places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

67-2222. Election to take payment or delivery. The state department of revenue, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which the department deems to have a value less than the cost of giving notice and holding sale, or the department may, if the department deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in four places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

67-2223. Examination of records. The state department of revenue, or their designated agent, may at reasonable times and upon reasonable notice examine the records of any person if the department has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "The state board of equalization, or their designated agent" for "The state treasurer" at the beginning of the section; and substituted "the board" for "he" before "has reason to believe."

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state department of revenue as required under this act, the department shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in two places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

67-2225. Penalties. (a). * * * [Same as parent volume.]

(b) Any person who willfully refuses to pay or deliver abandoned property to the state department of revenue as required under this act shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state board of equalization" for "state treasurer" in subsection (b).

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsection (b).

67-2226. Rules and regulations. The state department of revenue is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "The state board of equalization" for "The state treasurer" at the beginning of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

CHAPTER 23—UNIT OWNERSHIP ACT

Section
67-2302. Definition of terms.
67-2303. Application of act—execution, acknowledgment, recording of declaration.
67-2303.1. Disposition of funds from purchase of lease of unit prior to completion of construction.
67-2303.2. Notice of intention to sell by developer—fees.
67-2303.3. Examination of project by department after notice of intent to sell.
67-2303.4. Refund of purchaser's funds for changes in building plans—final reports.
67-2303.5. Final report prior to completion of project—supplemental report.
67-2303.6. No binding contract until purchaser has received final report.
67-2304. Status of the unit.
67-2305. Ownership of unit.
67-2314. Contents of declaration.
67-2317. Approval of declaration before recording.
67-2318. Recording of declaration.
67-2319. Floor plans recorded with declaration.
67-2322. Contents of deed or leases of unit.
67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance or lease.

67-2340. Separate taxation.
67-2342. Appraisal and assessment of units.
67-2343. Investigation by department—injunction.
67-2344. Misdemeanor.

67-2302. Definition of terms. As used in sections 67-2302 to 67-2342, unless the context requires otherwise:

(1) to (4). * * * [Same as parent volume.]

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of sections 67-2301 to 67-2342.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of sections 67-2302 to 67-2342.

(7) "Department" means the department of business regulation.

(8) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) and (b). * * * [Same as (6)(a) and (6)(b) in parent volume.]

(c) The basements, yards, gardens, parking areas and outside storage spaces, private pathways, sidewalks and private roads;

(d) to (g). * * * [Same as (6)(d) to (6)(g) in parent volume.]

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(10) "Majority" or "Majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50%) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(12) "Project" means a real estate condominium project; a plan whereby a condominium of two (2) or more units, located on property submitted to the provisions of 67-2302—67-2342, are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 67-2302 to 67-2342.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.

History: En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted subsection (5); renumbered former subsection (5) as (6); inserted subsection (7); renumbered former subsection (6) as (8); added "private pathways, sidewalks and private roads" to paragraph (c) of present subsection (8); renumbered former subsections (7), (8) and (9) as (9), (10) and (11); inserted subsection (12); renumbered former subsections (10), (11), (12), (13) and (14) as (13), (14), (15), (16) and (17); and added the second sentence to present subsection (17).

67-2303. Application of act—execution, acknowledgment, recording of declaration. In order to submit any property to the provisions of sections 67-2302 to 67-2342, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with section 67-2314.

History: En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "sole" before "owner"; inserted "or sole lessee or all of the owners or all of the lessees" and "execute, acknowledge, and" in the first sentence; deleted "and acknowledged by the owner of the property" from the end of the second sentence; and made a minor change in style.

67-2303.1. Disposition of funds from purchase of lease of unit prior to completion of construction. (1) If units are conveyed or leased prior to the completion of construction of the building, within which such unit is located, and all of the general common elements of the project (except those general common elements forming a part of a separate building inclosing other units) as set forth in declaration filed pursuant to section 67-2314, all moneys from the sale of the units including any payments made on loan commitments from lending institutions, shall be deposited in escrow by the developer in a fund with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of sections 67-2303.2 through 67-2303.6, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with sections 67-2303.2 through 67-2303.6.

(4) If sections 67-2303.2 through 67-2303.6 have been complied with, disbursements from such fund may be made, from time to time, to pay for

construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all mechanic's and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

History: En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973.

Title of Act

An act to amend the Unit Ownership Act to provide that lessees of a condominium unit may be treated as owners and to provide for sale of units before construction to be under the control of the department of business regulation; amending sections 67-2302 through 67-2305, 67-2314, 67-2319, 67-2322 and 67-2323, R. C. M. 1947.

67-2303.2. Notice of intention to sell by developer—fees. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is fifty dollars ($50). For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of one hundred dollars ($100) for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of five hundred dollars ($500).

History: En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973.

67-2303.3. Examination of project by department after notice of intent to sell. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with section 67-2303.1.

History: En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973.

67-2303.4. Refund of purchaser's funds for changes in building plans—final reports. (1) Purchasers funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings, unless purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within one (1) year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

History: En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973.

67-2303.5. Final report prior to completion of project—supplemental report. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) There is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys fees, financing costs, provisions for contingency, and other costs which must be paid on or before the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than one hundred per cent (100%) of the cost of construction with a reliable surety company;

(vi) if purchasers funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under section 67-2303.1 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics' and material-

men's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.

(b) The declaration provided for in section 67-2314 has been filed.

(2) If after a final report has been issued, any circumstance occurs which would render the final report misleading as to purchasers, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

History: En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973.

67-2303.6. No binding contract until purchaser has received final report. (1) The developer, or any other person offering any unit in a condominium project prior to completion of its construction, shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the reports; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the department for a period of three (3) years from the date the receipt was taken.

History: En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973.

67-2304. Status of the unit. While the property is submitted to sections 67-2302 to 67-2342, a unit in the building may be individually conveyed, leased or encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965; amd. Sec. 9, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "leased" near the beginning of the section and made a minor change in style.

67-2305. Ownership of unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit. A unit may be jointly or commonly owned by more than one (1) person.

History: En. Sec. 5, Ch. 120, L. 1965; amd. Sec. 10, Ch. 150, L. 1973.

Amendments

The 1973 amendment added the second sentence.

67-2314. Contents of declaration. A declaration shall contain:

(1) A description of the land, whether leased or in fee simple, on which the building is or is to be located.

(2) to (8). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 120, L. 1965; amd. Sec. 11, Ch. 150, L. 1973.

Amendments

The 1973 amendment added "whether leased or in fee simple, on which the building is or is to be located" to subsection (1).

67-2317. Approval of declaration before recording. Before a declaration may be recorded, it must be approved by the agent of the department of revenue in the county in which the property is located. No declaration shall be approved unless:

(1) and (2). * * * [Same as parent volume.]

History: En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 40, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "county assessor of" in order to implement article VIII, section 3 of the 1972 constitution.

67-2318. Recording of declaration. When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the department of revenue or its agent in the county in which the property is located.

History: En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 41, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent in the county in which the property is located" at the end of the section for "county assessor" in order to implement article VIII, section 3 of the 1972 constitution.

67-2319. Floor plans recorded with declaration. Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built, there shall be recorded within thirty (30) days from the date of completion of the building, or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect or registered professional engineer certifying that the floor plans previously filed, or being filed simultaneously with the amendment, fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965; amd. Sec. 12, Ch. 150, L. 1973.

Amendments

The 1973 amendment substituted "are an accurate copy of the plan filed with and approved by the city and county officers having jurisdiction to issue building permits" for "fully and accurately depict the layout of the units and floors of the

building and the date construction of the building was completed" at the end of the first sentence; and added the second sentence.

67-2322. Contents of deed or leases of unit. The deed or lease of a unit shall contain:

(1) to (4). * * * [Same as parent volume.]

(5) Any further details the grantor and grantee or lessor and lessee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965; amd. Sec. 13, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "or lease" in the preliminary clause; and inserted "or lessor and lessee" in subsection (5).

67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance or lease. At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965; amd. Sec. 14, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "or lease" following "conveyance" and inserted "or leased" following "conveyed."

67-2340. Separate taxation. (1) * * * [Same as parent volume.]

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the department of revenue or its agent may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: En. Sec. 40, Ch. 120, L. 1965; amd. Sec. 42, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" in subsection (2), in order to implement article VIII, sections 3 and 7 of the 1972 constitution.

67-2342. Appraisal and assessment of units. The state department of revenue shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 67-2302 to 67-2342.

History: En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

67-2343. Investigation by department—injunction. If the department has satisfactory evidence to indicate that any person has violated any provision of sections 67-2301 to 67-2342, it may conduct an investigation and bring an action for injunction.

History: En. Sec. 15, Ch. 150, L. 1973.

67-2344. Misdemeanor. Any person who violates any provision of sections 67-2301 to 67-2342 or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars ($1,000) or by imprisonment for not more than one (1) year, or both.

History: En. Sec. 16, Ch. 150, L. 1973.

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

Chapter
1. Purpose of act—definitions, Repealed—Section 63, Chapter 323, Laws of 1973.
2. Retirement system created—who are members, Repealed—Section 63, Chapter 323, Laws of 1973.
3. Contracts between municipal corporations, counties and public agencies, Repealed—Section 63, Chapter 323, Laws of 1973.
4. Cost of service, how borne—change of status—membership—retirement fund, Repealed—Section 63, Chapter 323, Laws of 1973.
5. Board of administration—powers and duties, Repealed—Section 63, Chapter 323, Laws of 1973.
6. Prior service—allowance for—cost to cities, counties and public agencies, Repealed—Section 63, Chapter 323, Laws of 1973.
7. Management of retirement fund, Repealed—Section 63, Chapter 323, Laws of 1973.
8. Retirement—compulsory—voluntary, Repealed—Section 63, Chapter 323, Laws of 1973.
9. Service and disability retirement allowances, Repealed—Section 63, Chapter 323, Laws of 1973.
10. Reinstatement—reduction of allowance—optional modification of allowances, Repealed—Section 63, Chapter 323, Laws of 1973.
11. Death benefits, Repealed—Section 63, Chapter 323, Laws of 1973.
12. Benefits to whom paid, Repealed—Section 63, Chapter 323, Laws of 1973.
13. Miscellaneous provisions, Repealed—Section 63, Chapter 323, Laws of 1973.
15. Public employees' retirement system—definitions and general provisions, 68-1501 to 68-1504.
16. Membership—service credits, 68-1601 to 68-1608.
17. Contracts with political subdivisions—elections, 68-1701 to 68-1704.
18. Board of administration, 68-1801 to 68-1804.
19. Management of fund—employer and employee contributions, 68-1901 to 68-1907.
20. Service retirement eligibility and allowances, 68-2001 to 68-2005.
21. Disability retirement eligibility and allowance, 68-2101 to 68-2104.
22. Reduction or cancellation of allowance, 68-2201 to 68-2204.
23. Death benefits, 68-2301 to 68-2305.
24. Beneficiaries, 68-2401, 68-2402.
25. Administration of contributions and allowances, 68-2501 to 68-2514.

CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-101, 68-102. Repealed.

Repeal

Sections 68-101, 68-102 (Secs. 1, 2, Ch. 212, L. 1945; Sec. 1, Ch. 297, L. 1947; Sec. 1, Ch. 186, L. 1951; Sec. 1, Ch. 92, L. 1955; Sec. 1, Ch. 246, L. 1959; Sec. 1, Ch. 271, L. 1969), relating to the Public Employees Retirement Act, were repealed by Sec. 63, Ch. 323, Laws of 1973. For new law, see secs. 68-1501 and 68-1503.

CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-201 to 68-203. Repealed.

Repeal

Sections 68-201 to 68-203 (Secs. 3 to 5, Ch. 212, L. 1945; Sec. 2, Ch. 297, L. 1947; Sec. 2, Ch. 186, L. 1951; Secs. 2, 3, Ch. 92, L. 1955; Sec. 2, Ch. 246, L. 1959; Sec. 1, Ch. 150, L. 1967), relating to membership in the public employees' retirement system, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1601 to 68-1608.

CHAPTER 3—CONTRACTS BETWEEN MUNICIPAL CORPORATIONS, COUNTIES AND PUBLIC AGENCIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-301 to 68-303. Repealed.

Repeal

Sections 68-301 to 68-303 (Secs. 6 to 8, Ch. 212, L. 1945; Sec. 1, Ch. 119, L. 1965), relating to contracts of the board of administration with political subdivisions and other public agencies, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1701 to 68-1704.

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP—RETIREMENT FUND

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-401 to 68-405. Repealed.

Repeal

Sections 68-401 to 68-405 (Secs. 9 to 13, Ch. 212, L. 1945; Secs. 3, 4, Ch. 297, L. 1947; Sec. 3, Ch. 186, L. 1951; Sec. 197, Ch. 147, L. 1963), relating to cost of service and changes in status of members of the public employees' retirement system, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1603, 68-1904 and 68-2512.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-501. Repealed.

Repeal

Section 68-501 (Sec. 14, Ch. 212, L. 1945; Sec. 5, Ch. 297, L. 1947; Sec. 4, Ch. 186, L. 1951; Sec. 1, Ch. 224, L. 1951; Sec. 1, Ch. 225, L. 1953; Sec. 4, Ch. 92, L. 1955; Sec. 1, Ch. 233, L. 1965; Sec. 2, Ch. 271, L. 1969), relating to the board of administration, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1801 to 68-1804.

CHAPTER 6—PRIOR SERVICE—ALLOWANCE FOR—COST TO CITIES, COUNTIES AND PUBLIC AGENCIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-601 to 68-603. Repealed.

Repeal

Sections 68-601 to 68-603 (Secs. 15 to 17, Ch. 212, L. 1945), relating to allowance of credit for prior service, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1601 to 68-1608.

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-701 to 68-710. Repealed.

Repeal

Sections 68-701 to 68-710 (Sec. 18, Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; Sec. 1, Ch. 222, L. 1967; Sec. 1, Ch. 227, L. 1967; Sec. 1, Ch. 98, L. 1969), relating to management of the retirement fund, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1901 to 68-1907.

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-801, 68-802. Repealed.

Repeal

Sections 68-801, 68-802 (Sec. 19, Ch. 212, L. 1945; Sec. 7, Ch. 297, L. 1947; Sec. 5, Ch. 186, L. 1951; Sec. 1, Ch. 35, L. 1955; Sec. 4, Ch. 246, L. 1959; Sec. 2, Ch. 227, L. 1967; Sec. 1, Ch. 244, L. 1969; Sec. 3, Ch. 271, L. 1969; Sec. 1, Ch. 116, L. 1971), relating to retirement by a public employee, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1901 to 68-1907 and 68-2001 to 68-2005.

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-901, 68-902. Repealed.

Repeal

Sections 68-901, 68-902 (Sec. 20, Ch. 212, L. 1945; Sec. 6, Ch. 186, L. 1951; Sec. 5, Ch. 246, L. 1959; Sec. 1, Ch. 207, L. 1963; Sec. 3, Ch. 227, L. 1967; Sec. 4, Ch. 271, L. 1969; Secs. 2, 3, Ch. 116, L. 1971), relating to service and disability retirement allowances, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2002 to 68-2005, 68-2103 and 68-2104.

CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE—OPTIONAL MODIFICATION OF ALLOWANCES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1001 to 68-1005. Repealed.

Repeal

Sections 68-1001 to 68-1005 (Secs. 21 to 25, Ch. 212, L. 1945; Secs. 6 to 8, Ch. 92, L. 1955; Secs. 4, 5, Ch. 227, L. 1967), relating to modification and reduction of allowances and reinstatement to former employees, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2201 to 68-2204.

CHAPTER 11—DEATH BENEFITS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1101. Repealed.

Repeal

Section 68-1101 (Sec. 26, Ch. 212, L. 1945; Sec. 7, Ch. 186, L. 1951; Sec. 2, Ch. 225, L. 1953; Sec. 9, Ch. 92, L. 1955; Sec. 2, Ch. 207, L. 1963; Sec. 1, Ch. 110, L. 1965; Sec. 6, Ch. 227, L. 1967), relating to death benefits, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2301 to 68-2305.

CHAPTER 12—BENEFITS TO WHOM PAID

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1201. Repealed.

Repeal

Section 68-1201 (Sec. 27, Ch. 212, L. 1945), relating to the beneficiary of death benefits, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2401 and 68-2402.

CHAPTER 13—MISCELLANEOUS PROVISIONS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1301 to 68-1320. Repealed.

Repeal

Sections 68-1301 to 68-1320 (Secs. 28 to 33, 35 to 41, Ch. 212, L. 1945; Secs. 1, 2, Ch. 40, L. 1947; Secs. 8, 9, Ch. 297, L. 1947; Secs. 1 to 4, Ch. 132, L. 1953; Secs. 10 to 12, Ch. 92, L. 1955; Sec. 1, Ch. 181, L. 1961; Sec. 1, Ch. 214, L. 1967; Sec. 5, Ch. 271, L. 1969; Sec. 4, Ch. 116, L. 1971), miscellaneous provisions relating to the Public Employees' Retirement Act, were repealed by Sec. 63, Ch. 323, Laws 1973.

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

68-1405. Payments into the Montana game wardens' retirement system.

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(e).

Investment functions of board transferred, sec. 82A-205(4).

CHAPTER 15—PUBLIC EMPLOYEES' RETIREMENT SYSTEM—DEFINITIONS AND GENERAL PROVISIONS

Section
68-1501. Purpose of act.
68-1502. Retirement system created.
68-1503. Definitions.
68-1504. Short title.

68-1501. Purpose of act. The purpose of this act is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship, or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits.

History: En. 68-1501 by Sec. 2, Ch. 323, L. 1973.

Title of Act

An act for the codification and general revision of the laws relating to the public employees' retirement system and repealing sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R. C. M. 1947.

68-1502. Retirement system created. A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973.

68-1503. Definitions. Unless the context requires otherwise, in this act:

(1) "Retirement system" means the public employees' retirement system created by this act.

(2) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary statements

of its employees to the department of administration, state auditor and state treasurer for payment.

(3) "Member" means any person included in the membership of the retirement system set forth in section 68-1602 and not excluded in section 68-1603 or 68-2510.

(4) "Board" means the board of administration provided for in section 82A-210.

(5) "Employee" means any person employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person deemed such pursuant to section 68-2510.

(6) "Retirement fund" means the public employees' retirement account in the agency fund.

(7) "Service" means employment of an employee, except as provided in sections 68-1604 and 68-1605.

(8) "Prior service" shall mean all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of the state of Montana.

(9) "Beneficiary" means the person so designated pursuant to section 68-2401.

(10) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislative assembly and the lieutenant governor of the state of Montana for any year shall be deemed to be that portion of the product of the daily compensation for such position multiplied by three hundred sixty (360), upon which such member elects to pay normal contributions during the year.

(11) "Final compensation" means a member's highest average annual compensation during any three (3) consecutive years of membership service.

(12) "Regular interest" means interest at the rate set from time to time by the board.

(13) "Normal contributions" means contributions required by members under this act and any optional contributions, made under the provisions of sections 68-1605 and 68-1906.

(14) "Additional contributions" means contributions by members under the provisions of section 68-1903.

(15) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(16) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(17) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(18) "Pension" means payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting employers, from the funds of such contracting employers, as provided in this act.

(19) "Annuity" means payments for life derived from contributions made by a member as provided in this act.

(20) "Retirement allowance" means the periodic benefit payable following service, early or disability retirement.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(22) "Actuary" means the actuary retained by the board in accordance with section 68-1804.

(23) "Benefit" means the retirement allowance, survivorship allowance, death benefit or refund of accumulated contributions provided by this act.

(24) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(25) "Employer" means the state of Montana, its university or any of the colleges, schools, components or units thereof for the purposes of this act, or any political subdivision or governmental entity which has contracted to come into the system.

(26) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislative assembly and a lieutenant governor of the state of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to section 68-1503 (10).

(27) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in Title 68, chapter 23.

(28) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(29) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to section 68-2504 and from contracting employers pursuant to the contracts between them and the board.

(30) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board shall deem necessary.

(31) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this act.

(32) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, means disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(33) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973.

68-1504. Short title. This act may be cited as "The Public Employees' Retirement System Act."

History: En. Sec. 1, Ch. 323, L. 1973.

CHAPTER 16—MEMBERSHIP—SERVICE CREDITS

Section
68-1601. Membership.
68-1602. Exclusions.
68-1603. Termination of membership.
68-1604. Absence not included in time of service.
68-1605. Absence in military service.
68-1605.1. Election to qualify military service for full credit.
68-1606. Absence due to illness or injury.
68-1607. Qualification of service with contracting employer.
68-1608. Qualification of prior service not previously credited.

68-1601. Membership. (1) All employees shall become members on the first day of employment. Each employee shall file with the board of administration such information affecting his status as a member of the retirement system as the board may require.

(2) Every employee who re-enters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(3) Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this act.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973.

68-1602. Exclusions. The following persons shall not become members of the retirement system:

(1) elective officers who have not filed with the board of administration written requests to become members; provided that any person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office; and provided further that if he shall affirmatively exercise the option, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors unless written contract specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members; provided, any person so excluded from membership by his own election may become a member by meeting the requirements of the balance of this subsection. Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed an election not to be a member;

(7) persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances; any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of making normal contributions as permanently separated from service; the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section, persons receiving pensions, retirement allowances or other payments, from any source, on account of employment other than as an employee as defined in this act, shall not be considered, because of such receipt, members of any other retirement or pension system;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members.

History: En. 68-1602 by Sec. 6, Ch. 323, L. 1973.

68-1603. Termination of membership. If any part of a member's accumulated normal contributions are refunded pursuant to section 68-1905, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973.

68-1604. Absence not included in time of service. Except as provided in section 68-1605 and 68-1606, time during which a member is absent from compensated employment with an employer shall not be allowed in computing service.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973.

68-1605. Absence in military service. Any period of absence from compensated employment with an employer occurring either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter for one of the following reasons shall be considered as service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits:

(1) by reason of having been ordered on duty with the armed forces of the United States;

(2) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(3) by reason of direct assignment to the department of war or defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

Any member so absent shall have the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does so contribute he shall receive credit for service for such time in the same manner as if he had not been absent from service. Whenever a member elects to continue his contributions the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

Any member so absent shall lose the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to section 68-1905.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973.

68-1605.1. Election to qualify military service for full credit. A member with ten (10) years or more of state service credited under this act may at any time prior to retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to section 68-1605. To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his eleventh year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of ten (10) years.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973.

68-1606. Absence due to illness or injury. Time during which a member is absent from service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for retirement benefits or survivorship allowances, but not for the calculation of such benefits.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973.

68-1607. Qualification of service with contracting employer. Subject to the provisions of this section, any person who has service with a contracting employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board of administration no later than July 1, 1975; provided that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member. In either event, such person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been a contracting employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. Payment may be made in one sum at the time of such filing or on an installment basis thereafter, except that failure to make installment payments of at least ten per cent (10%) of compensation in any payroll period thereafter shall forfeit such person's right to make any further installments.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973.

68-1608. Qualification of prior service not previously credited. Credit for any prior service not previously granted shall be granted to a member upon his filing written notice thereof with the board of administration

no later than July 1, 1975; provided, that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member and further provided he otherwise has not less than ten (10) years of creditable service of which not less than three (3) years have been as a contributing member of the retirement system. Proper certification of such service must be furnished.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973.

CHAPTER 17—CONTRACTS WITH POLITICAL SUBDIVISIONS—ELECTIONS

Section
68-1701. Contracts with political subdivisions—election—ballot.
68-1702. Request by individual employee for employer to participate.
68-1703. Conversion of local or state retirement plan.
68-1704. Tax levy to meet employer's obligations.

68-1701. Contracts with political subdivisions—election—ballot. Any municipal corporation, county or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this act. The contract may include any provisions which are consistent with this act and necessary in the administration of the retirement system as it affects the contracting employer and its employees. The approval and termination of the contract shall be subject to the following provisions, in addition to the other provisions of this act.

(1) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds (2/3) of the members of the legislative body, not less than twenty (20) days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(2) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if in its opinion said classification affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(3) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

History: En. 68-1701 by Sec. 14, Ch. 323, L. 1973.

68-1702. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least two (2) years, an employee of a municipal corporation, county or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within thirty (30) days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in section 68-1701.

History: En. 68-1702 by Sec. 15, Ch. 323, L. 1973.

68-1703. Conversion of local or state retirement plan. Should the legislative body of any city, county or public agency having an existing retirement, pension or annuity fund or system, hereafter referred to as the local system, desire to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board of administration in the manner provided in section 68-1701 provided, however, that the employees voting as provided in subsection (1) of section 68-1701 shall be limited to active members of the local system and approval shall require an affirmative vote of two-thirds (2/3) of such employees.

All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract shall be continued and paid at their existing rates by the public employees' retirement system. The liability for such pensions shall be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system shall be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of said securities shall be determined by the board of administration.

The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members, and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of such members in the public employees' retirement system and administered as if said contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section shall be payable by the contracting employer, with interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973.

68-1704. Tax levy to meet employer's obligations. If the contributions required to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer shall have authority to budget, levy and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per one hundred dollars ($100) of assessable property as will be sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer. Any person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer shall have the right to maintain the appropriate action or proceeding to require performance of the duty imposed on the legislative body by this section.

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973.

CHAPTER 18—BOARD OF ADMINISTRATION

Section
68-1801. Location of board—quorum—appointment of committee—election of president.
68-1802. Compensation and expenses of board members.
68-1803. Rules and regulations—records—annual report by board.
68-1804. Employment of actuary—biennial investigation and valuation.

68-1801. Location of board—quorum—appointment of committee—election of president. The board shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board shall elect one of its members president. The board may appoint a committee of one or more of its members, which shall have authority to perform routine acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. The department of administration shall appoint and fix the compensation of the administrator and other necessary employees. The attorney general shall be the legal counsel for the board.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973.

68-1802. Compensation and expenses of board members. The actual and necessary expenses of members of the board shall be reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive in addition to actual and necessary expenses compensation at the rate of twenty-five dollars ($25) per day. All expenses of the administration of this act in excess of the amounts provided by the membership fees contributed pursuant to section 68-1904 shall be a charge on the appropriation made from the general fund of the state.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973.

68-1803. Rules and regulations—records—annual report by board. (1) The board of administration may establish such rules and regulations as it deems proper for the administration and operation of the retirement system and enforcement of this act, subject to its limitation. The board shall determine who are employees within the meaning of this act. The board shall be the sole authority under this act as to the conditions under which persons may become members and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this act. The board shall establish those uniform rules and regulations as are necessary to determine credit for fractional years of service. The board shall maintain such records and accounts it determines necessary for the administration of this act. Upon the basis of the findings of the actuary pursuant to section 68-1804, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this act.

(2) As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investment. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973.

68-1804. Employment of actuary—biennial investigation and valuation. The board shall retain on a full-time basis, a competent actuary who is a member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. Biennially he shall make an actuarial investigation into the suitability of the actuarial tables used by the system and an actuarial valuation of the assets and liabilities of the retirement system. From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973.

CHAPTER 19—MANAGEMENT OF FUND—EMPLOYER AND EMPLOYEE CONTRIBUTIONS

Section
68-1901. Management of fund.
68-1902. Members' contributions—deduction from pay.
68-1903. Additional contributions allowed.
68-1904. Employer contribution to administrative expense.
68-1905. Refund of contributions on termination of service.
68-1906. Reinstatement after withdrawal of contributions—redeposit of contributions.
68-1907. Transfer of dormant savings account to pension fund.

68-1901. Management of fund. The retirement fund shall be managed as follows:

(1) The board of administration shall have exclusive control of the administration of the fund except as otherwise provided.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit monthly in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the department directly or indirectly, for himself or as an agent or partner of others, may borrow any of its funds or deposits, nor shall any member or employee in any manner use the same except to make such current and necessary payments as are authorized by the department nor shall any member or employee of the department become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973.

68-1902. Members' contributions—deduction from pay. The normal contribution of each member shall be equal to five and seventy-five one hundredths per cent (5.75%) of his compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973.

68-1903. Additional contributions allowed. Subject to the rules and regulations promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in section 68-1902 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application

shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973.

68-1904. Employer contribution to administrative expense. In addition to the contributions elsewhere provided in this act, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of one dollar ($1). These fees together with other moneys appropriated for that purpose shall be used for the purpose of defraying the administrative expense of this act.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973.

68-1905. Refund of contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions as he requests. If he has ten (10) or more years of creditable service, the amount paid shall include regular interest on the accumulated normal contributions. If he has less than ten (10) years of service and he does not re-enter service for a period of five (5) years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn. Upon qualification for any other benefit under this act, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-1906.

(2) Should the state service of any member, regardless of years of service, be discontinued other than by death or retirement after July 1, 1974, he shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973.

68-1906. Reinstatement after withdrawal of contributions—redeposit of contributions. Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service, and he may reinstate that membership service by redepositing, within two (2) years of his re-entering the retirement system, the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken

by such last termination. Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973.

68-1907. Transfer of dormant savings account to pension fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973.

CHAPTER 20—SERVICE RETIREMENT ELIGIBILITY AND ALLOWANCES

Section
68-2001. Eligibility for service retirement—early retirement.
68-2002. Time for commencement of allowance.
68-2003. Annual amount of retirement allowance payable.
68-2004. Excess allowance to members on July 1, 1973.
68-2005. Early retirement allowance.

68-2001. Eligibility for service retirement—early retirement. (1) A member who has attained the age of sixty (60) and completed ten (10) years of creditable service is eligible for service retirement. A member who has attained age sixty-five (65) is eligible for service retirement regardless of his years of creditable service. A member who has completed thirty (30) years or more of state service is eligible for service retirement regardless of his age.

(2) A member who is not eligible for service retirement but has attained age fifty-five (55) and completed ten (10) years of creditable service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973.

68-2002. Time for commencement of allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2001 and filed the appropriate written application. The retirement allowance shall commence on the day following the member's last day of membership service or on the first day of the month in which his application is filed with the board, whichever is later.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973.

68-2003. Annual amount of retirement allowance payable. The annual amount of retirement allowance payable to a member following his service retirement is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) one sixty-fifth (1/65) of his final compensation multiplied by the number of years of his creditable service;

(3) any retirement allowance payable under section 68-2004.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973.

68-2004. Excess allowance to members on July 1, 1973. The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2) as follows over subsection (2) of section 68-2003:

(1) the sum of a pension for prior service equal to one sixty-fifth (1/65) of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age seventy (70) in service, the lesser of four hundred eighty dollars ($480) or one-half (½) of his final compensation.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973.

68-2005. Early retirement allowance. The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age sixty (60) pursuant to section 68-2003.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973.

CHAPTER 21—DISABILITY RETIREMENT ELIGIBILITY AND ALLOWANCE

Section
68-2101. Disability retirement eligibility—definitions—medical examinations—hearings—waiver.
68-2102. Application for disability retirement allowance.
68-2103. Annual allowance for duty-related disability—reduction for workmen's compensation.
68-2104. Annual allowance for nonduty-related disability—reduction for misconduct.

68-2101. Disability retirement eligibility—definitions—medical examinations—hearings—waiver. (1) A member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) A member who is not eligible for service or early retirement but has completed ten (10) years of creditable service and has become disabled while in active service for other than duty-related reasons, as

defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

(4) "Duty-related" means as a result of an injury or disease arising out of or in the course of his employment with an employer.

(5) "Injury" means a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical conditions as result therefrom, and excluding disease not traceable to injury.

(6) The board shall determine whether a member has become disabled and whether a disabled member became disabled for duty-related reasons. In the discharge of its duty regarding such determinations, the board, any member thereof or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oath and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and of sections 68-2201 and 68-2202 and shall pay for those medical services and advice compensation the board deems reasonable.

(7) A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973.

DECISIONS UNDER FORMER LAW

Incapacity Not Result of Employment

District court improperly reversed decision of board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance since district court substituted its judgment for that of board and since "disease" as used in former section 68-901, did not include "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers." State ex rel. Bailey v. Grande, 154 M 437, 465 P 2d 334.

68-2102. Application for disability retirement allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2101 and duly filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within four (4) full months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

The retirement allowance payable to a member who has become disabled shall commence on the day following the member's last day of membership service.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973.

68-2103. Annual allowance for duty-related disability—reduction for workmen's compensation. The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons is fifty per cent (50%) of his final compensation; provided, however, that the annual amount of retirement allowance shall be twenty-five per cent (25%) of final compensation for any period during which the member has been awarded compensation by the workmen's compensation division, whether or not such compensation is received in periodic payments or in a lump sum; provided further, that the annual amount of retirement allowance shall revert to fifty per cent (50%) of final compensation at the end of such period.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973.

68-2104. Annual allowance for nonduty-related disability—reduction for misconduct. The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(3) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension which is the lesser of (a) or (b) as follows:

(a) a pension which, together with the annuity provided under (2), shall make the retirement allowance equal to ninety per cent (90%) of one sixty-fifth (1/65) of his final compensation multiplied by his years of creditable service;

(b) a pension equal to twenty-five per cent (25%) of his final compensation.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973.

CHAPTER 22—REDUCTION OR CANCELLATION OF ALLOWANCE

Section
68-2201. Medical examination of disability retiree—cancellation and reinstatement if retiree capable—refund of contributions.
68-2202. Disability allowance reduced by earnings.
68-2203. Optional retirement allowance.
68-2204. Cancellation of retirement allowance upon re-employment.

68-2201. Medical examination of disability retiree—cancellation and reinstatement if retiree capable—refund of contributions. (1) The board

may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination the board shall determine whether said recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that said recipient is not so incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) Any person whose retirement allowance is so canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability shall not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) If any person whose retirement allowance is so canceled is not re-employed in a position subject to the retirement system, his service shall be deemed to be discontinued coincident with his retirement allowance for the purposes of section 68-1905.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973.

68-2202. Disability allowance reduced by earnings. Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in section 68-1503, the amount of his pension for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973.

68-2203. Optional retirement allowance. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) Option 1—a death benefit to the member's beneficiary equal to the excess, if any, of the member's accumulated contributions with regular interest to the day his retirement allowance commenced over the total of his retirement allowance payments.

(b) Option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(c) Option 3—a continuation of one-half (½) of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(d) Option 4—an actuarial equivalent benefit based on the life of a single designated beneficiary.

(e) Option 5—such other actuarially equivalent benefit as shall be approved by the board.

(2) Election of any optional retirement allowance shall be by written application filed prior to the first payment of the regular retirement allowance. The contingent annuitant named by the member must have an insurable interest in the life of the member.

(3) If either the member or his contingent annuitant should die before the member has received the first payment under option 2 or 3, the election of such option shall automatically be canceled.

(4) If a member dies after retirement and within thirty (30) days from the date his election or changed election of an optional retirement allowance is received by the board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973.

68-2204. Cancellation of retirement allowance upon re-employment. Any person receiving a retirement allowance who becomes an employee shall be considered reinstated from retirement and his retirement allowance shall be canceled. Upon subsequent retirement he shall be entitled to receive a recalculated benefit as provided in section 68-2003. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment. Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least two (2) years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973.

CHAPTER 23—DEATH BENEFITS

Section
68-2301. Death benefits—eligibility.
68-2302. Amount of death benefit.
68-2303. Election of optional death benefit by beneficiary.
68-2304. Survivorship allowance elected by beneficiary.
68-2305. Amount of survivorship allowance.

68-2301. Death benefits—eligibility. The board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

(1) while in service;

(2) within four (4) months after the discontinuance of service but before retirement;

(3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than four (4) months;

(4) while disabled, as defined in section 68-2101, if he has been continuously so disabled from the discontinuance of his service but he is not receiving a retirement allowance because of the disability.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973.

68-2302. Amount of death benefit. The amount of death benefit is the sum of (1) and (2), as follows:

(1) the member's accumulated contributions, together with regular interest on the accumulated normal contributions to the date of the member's death;

(2) an amount equal to one-twelfth (1/12) of the compensation received by the member during the last twelve (12) months of such compensation multiplied by the smaller of six (6) or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the workmen's compensation division of the state of Montana that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment.

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973.

68-2303. Election of optional death benefit by beneficiary. A member or his beneficiary after his death may elect to have the death benefit paid in an actuarially equivalent form subject to such rules and regulations as the board may adopt. Election of an optional death benefit shall be by written application.

History: En. 68-2303 by Sec. 44, Ch. 323, L. 1973.

68-2304. Survivorship allowance elected by beneficiary. A beneficiary eligible to receive a death benefit may elect a survivorship allowance instead if all of the following conditions are met:

(1) the member on behalf of whom the death benefit is payable was eligible for service retirement or early retirement;

(2) the beneficiary is a natural person of legal age with an insurable interest in the deceased at the time of his death;

(3) the beneficiary elects the survivorship allowance within ninety (90) days of receipt of notice from the board that he is eligible to receive the death benefit. Election shall be by written application.

History: En. 68-2304 by Sec. 45, Ch. 323, L. 1973.

68-2305. Amount of survivorship allowance. The annual amount of survivorship allowance payable to a member's beneficiary shall be the same as the optional retirement allowance would have been if the member

had retired immediately prior to his death after having elected an option 4 retirement allowance with the beneficiary as the contingent annuitant.

History: En. 68-2305 by Sec. 46, Ch. 323, L. 1973.

CHAPTER 24—BENEFICIARIES

Section
68-2401. Designation of beneficiary—effect of no designation.
68-2402. Minor beneficiaries—small amounts paid to custodian.

68-2401. Designation of beneficiary—effect of no designation. (1) The beneficiary of a member shall be such person as the member shall so designate in the appropriate written application. A member may revoke such designation and name a different beneficiary by filing a revised written instrument with the board. If no living beneficiary is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of said survivor's estate, share and share alike, payment to be made in the same order in which the following groups are listed:

(a) husband or wife, or
(b) children, or
(c) father and mother, or
(d) grandchildren, or
(e) brothers and sisters, or
(f) nieces and nephews.

(2) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated. The payment shall be in full and complete discharge and acquittance of the board and system on account of said death.

(3) If a member's beneficiary cannot be found within ninety (90) days of the member's death or if the estate of the member is his beneficiary, the board in its discretion may pay all or a portion of the death benefit to the undertaker who conducted the funeral of the member or to any person or organization who paid the undertaker; provided, however, the amount so paid by the board shall not exceed the funeral expenses or the portion of such expenses paid by the person or organization respectively, all as evidenced by the sworn itemized statement of the undertaker and by other documents the board may require. The payment shall be in full and complete discharge and acquittance of the board and system up to the amount so paid, anything in this act to the contrary notwithstanding.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973.

68-2402. Minor beneficiaries—small amounts paid to custodian. If any benefit from the system not to exceed five hundred dollars ($500) is payable to a minor who has no guardian of his estate, the benefit may be paid to the person entitled to the custody of a minor to hold for the minor upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed one thousand dollars ($1,000) in value. The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973.

CHAPTER 25—ADMINISTRATION OF CONTRIBUTIONS AND ALLOWANCES

Section
68-2501. Monthly payments—combining installments.
68-2502. Allowances exempt from execution, taxes, creditor process.
68-2503. Estimate of allowance when information incomplete.
68-2504. Employer contribution rates—actuarial determination.
68-2505. Payment of state contributions—budget and appropriations.
68-2506. Transfers between funds.
68-2507. Payment of contributions by contracting employer.
68-2508. Budget act superseded.
68-2509. Adjustment of errors in payments.
68-2510. Federally subsidized employees eligible—national guardsmen.
68-2511. Transfer of credits to and from teachers' retirement system.
68-2512. Reports by employers on status of employees.
68-2513. Cost-of-living increases.
68-2514. Retention of previously conferred benefits.

68-2501. Monthly payments—combining installments. A retirement allowance or survivorship allowance granted under the provisions of this act shall be payable in monthly installments, except that the board at its discretion may convert payments of less than twenty dollars ($20) per month to larger periodic payments which are the actuarial equivalent of such smaller payments, but which occur less frequently. If payments of at least twenty dollars ($20) per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance begins after the first day of the month or ends before the last day of the month.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973.

68-2502. Allowances exempt from execution, taxes, creditor process. The right of a person to a retirement allowance or any other benefit under this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

History: En. 68-2502 by Sec. 50, Ch. 323, L. 1973.

68-2503. Estimate of allowance when information incomplete. If it shall be impracticable for the board of administration to determine from

the records the length of service, the compensation or the age of any members, or if any member refuses or fails to give the board a statement of his state service, his compensation or his age, the said board may estimate, for the purposes of this act, such length of service, compensation or age.

History: En. 68-2503 by Sec. 51, Ch. 323, L. 1973.

68-2504. Employer contribution rates—actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be four and six-tenths per cent (4.6%) from July 1, 1973, to June 30, 1975, and four and nine-tenths per cent (4.9%) from July 1, 1975, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the forty (40) year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973.

68-2505. Payment of state contributions—budget and appropriations. (1) No later than the tenth day of each month, each department, board, commission, bureau or other agency of the state shall certify to the state auditor all contributions required of such unit and to its employees under this act on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for such contributions. The warrant shall be drawn to the credit of the retirement fund on the funds appropriated to that unit.

(2) Every state employer shall include in his budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this act for employees in their respective departments, and to the end that the legislature may make definite appropriation for the cost

incurred by each employer whose employees are within the retirement system created by this act.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973.

68-2506. Transfers between funds. Any fund out of which payments are made under the provisions of this act may be reimbursed to the extent of such payments by transfer of a sufficient sum for such reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor amount or amounts to be thus transferred, the fund or funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973.

68-2507. Payment of contributions by contracting employer. Between the first and twentieth day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this act on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

History: En. 68-2507 by Sec. 55, Ch. 323, L. 1973.

68-2508. Budget act superseded. This act shall be valid and effective despite any provisions in the state budget act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973.

68-2509. Adjustment of errors in payments. If more or less than the correct amount of contribution required by this act of a member, the state or a contracting employer is or has been paid, proper adjustment shall be made in connection with the subsequent payments, or such adjustments may be made by direct cash payments between the member, state or contracting employer in connection with whom the error was made, and the board. Adjustments to correct any other errors in payments to or by the board of administration may be made in the same manner.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973.

68-2510. Federally subsidized employees eligible—national guardsmen. (1) A person whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national guard is considered an employee. Any such person who was an employee on July 1, 1961, or prior thereto and who has filed with the board an election not to

become a member may at anytime, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of section 68-1608.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973.

68-2511. Transfer of credits to and from teachers' retirement system. (1) For the purpose of this section, "system" means the public employees' retirement system of Montana or the teachers' retirement system of the state of Montana.

(2) Upon transfer of a person from being an employee under one system to being an employee in the other, there shall be transferred service credits, both prior and membership, as have not been forfeited by withdrawal, unless the forfeited credits shall have been reinstated as provided by law. The amounts transferred shall be determined by the boards of the systems by mutual agreement and be certified by the system from which the employee transfers. Any person who is concurrently employed by employers under both systems shall be entitled to establish credits or equities in each of the systems in accordance with and to the extent set forth in this act.

(3) Eligibility of any such person for a retirement allowance, death benefit or refund of contributions shall be governed by the provisions of the act creating the system to which the person last made contributions based upon the entire length of service for which he shall have been granted credit under both systems.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973.

68-2512. Reports by employers on status of employees. The chief administrative officer of each employer shall furnish monthly reports to the board of administration showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The chief administrative officer shall furnish such additional information concerning the members as the board may require in the administration of the retirement system, including such services of the employer's office and departments as the board may request in connection with claims by members for benefits under the system.

History: En. 68-2512 by Sec. 60, Ch. 323, L. 1973.

68-2513. Cost-of-living increases. (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor, or successor agency.

(2) Effective July 1, 1973, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of one-half (1/2) of the percentage increase in the index for 1972 from the index for 1970 or the

index for 1972 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1973, every survivorship annuity then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of one-half (1/2) of the percentage increase in the index for 1972 from the index for the calendar year 1970 or for the index for 1972 from the index for the calendar year preceding the date of death of the deceased member.

History: En. 68-2513 by Sec. 61, Ch. 323, L. 1973.

68-2514. Retention of previously conferred benefits. All benefits conferred upon members of the public employees' retirement system prior to the effective date of this act shall be retained for all person[s] who are members of the system on the effective date of this act.

History: En. 68-2514 by Sec. 62, Ch. 323, L. 1973.

Compiler's Notes

The compiler has inserted the bracketed letter "s."

Repealing Clause

Section 63 of Ch. 323, Laws 1973 read "Sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R. C. M. 1947, are repealed."

TITLE 69—PUBLIC HEALTH AND SAFETY

Chapter
15. Boiler inspection—engineers license, 69-1501 to 69-1505, 69-1507 to 69-1517.
16. Hoisting engines—license of operators, 69-1601 to 69-1604, 69-1607.
17. Traction engines—capacity—inspection, 69-1701, 69-1702.
19. Explosives—regulation of manufacture, storage, sale and possession, 69-1931, 69-1932.
21. Building and mobile home construction standards, 69-2121 to 69-2124.
22. Blood and blood products, 69-2203 to 69-2205.
27. Fireworks regulation, 69-2701.
34. Sanitarians, 69-3401 to 69-3405, 69-3407 to 69-3409.
35. Motorboat and vessel regulation, 69-3502 to 69-3506, 69-3508 to 69-3508.2, 69-3510, 69-3512, 69-3514, 69-3516.1 to 69-3518.
36. Ambulance service, 69-3604 to 69-3613.
39. Air pollution, 69-3923.
41. State board of health, 69-4118.
42. Occupational health, 69-4206 to 69-4221.
44. Vital statistics, 69-4428.1.
45. Local boards of health, 69-4509, 69-4510.
46. Venereal disease, 69-4610.
48. Water pollution, 69-4801, 69-4802, 69-4804 to 69-4806, 69-4807.1, 69-4808.2, 69-4808.3, 69-4809.1 to 69-4814, 69-4820 to 69-4827.
50. Sanitation in subdivisions, 69-5001 to 69-5003, 69-5005 to 69-5009.
51. Cadavers, 69-5104.
52. Hospitals and health care facilities, 69-5201, 69-5203.1, 69-5213.
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56. Tourist campgrounds and trailer courts, 69-5601 to 69-5605, 69-5607.
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61. Consent by minors to medical care and psychiatric counseling, 69-6106, 69-6107.
64. Voluntary sterilization—state board of eugenics, 69-6402.
65. Montana Environmental Policy Act, 69-6501 to 69-6517.
66. Passenger tramways, 69-6601, 69-6602, 69-6605 to 69-6617.
67. Diagnostic tests for pregnant women and newborn infants, 69-6701 to 69-6713.
68. Motor vehicle wrecking facilities, 69-6801 to 69-6810.

CHAPTER 14—CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS

69-1404. (2675) Guarding of stairways, openings, etc.

Control of Premises

Construction company was not liable to building owner's employee for injuries incurred in fall through hole in floor as result of construction company's removing equipment, where construction company had completed work over two months prior to fall and was therefore not in immediate or direct control or supervision of building. Hannifin v. Cahill-Mooney Constr. Co., — M —, 498 P 2d 1214.

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section
69-1501. Advisory committee—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.
69-1502. Qualifications of boiler inspectors.
69-1503. Inspection of boilers—boiler installations.
69-1504. Inspection of boilers—further requirements in making inspection.
69-1505. Inspection of boilers—material to be used.
69-1507. Duty of owner to permit inspection—board action—costs and expenses.

65-1508. Licenses required—penalty for operating without license.
69-1509. Classification and licensing of engineers.
69-1510. Complaints and revocation of license.
69-1511. Certificate of inspection—wrongfully issuing certificate of inspection or licenses as misdemeanor.
69-1512. Fees for inspection or examination.
69-1513. Review of license rejection.
69-1514. Board decision.
69-1515. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.
69-1516. Certificates must be renewed yearly—failure to renew.
69-1517. Operation of boiler or steam engine without license.

69-1501. (2712) Advisory committee—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors. (1) There is hereby created to advise the industrial accident board an advisory committee which shall hereafter be referred to as the committee, consisting of three (3) members who shall be appointed by the governor, one for two (2) years, one for three (3) years and one for four (4) years. At the expiration of their respective terms or when vacancies occur they or their successors identified with the same interest respectively shall be appointed by the governor for terms of four (4) years each. Of these appointed members one (1) shall be a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment, one (1) shall be commissioned by the national board of boilers and pressure vessels inspectors and shall represent the boiler insurance companies licensed to do business in the state, and one (1) shall be a Montana registered professional mechanical engineer. The committee shall elect one (1) of its members as chairman and shall meet whenever required.

The members of the committee shall serve without salary but shall receive actual travel expenses in the same manner as other state officers.

The committee shall act in a technical advisory capacity to the industrial accident board and shall formulate definitions, rules and regulations for the safe construction, installation, operation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

In addition to the state boiler inspectors the industrial accident board shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment" for "a practical steam operating engineer of boilers" in the third sentence of the first paragraph of subsection (1); inserted "shall be commissioned by the national board of boilers and pressure vessels inspectors and" in the third sentence of the first paragraph of subsection (1); substituted "a Montana registered professional mechanical engineer" for "a graduate mechanical engineer" at the end of the third section of the first paragraph of subsection (1); substituted "whenever required" for "twice each year" at the end of the first paragraph of subsection (1); inserted "operation" in the first sentence of the third paragraph of subsection (1); deleted "not to exceed four (4)" before "state inspectors" in the first paragraph of subsection (2); inserted "duties" in the first paragraph of subsection (2); and made minor changes in phraseology.

Cross-References

Committee abolished and functions transferred, sec. 82A-1005(2).

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

69-1502. (2713) **Qualifications of boiler inspectors.** No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least ten years of actual experience in the operation of steam engines, steam boilers, and steam machinery, and who has not held for at least three (3) years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R. C. M. 1921; amd. Sec. 2, Ch. 225, L. 1971.

Amendments

The 1971 amendment reduced the stationary engineer's license requirement from five years to three years.

69-1503. (2714) **Inspection of boilers—boiler installations.** (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the board stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the board a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized by the board. Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the board of such action and such boiler or boilers shall at the discretion of the board be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the board as herein provided, or who operates such boilers without a certificate from the board, shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dol-

lars ($500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3). * * * [Same as parent volume.]

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "all boilers" for "all steam boilers" near the beginning of subsection (1); inserted "for operation in this state" in the first sentence of subsection (1); substituted "board" for "boiler inspector" in four places in subsection (1); deleted "where they had heretofore been located" following "number and kind of boilers" in the first sentence of subsection (1); inserted new second and third sentences in subsection (1); inserted "When necessary" at the beginning of subsection (2); increased the hydrostatic pressure testing requirement specified in the first sentence of subsection (2) from 133⅓% to 150%; and made minor changes in phraseology.

69-1504. (2715) **Inspection of boilers—further requirements in making inspection.** (1) The inspector must also satisfy himself that the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged, and that the safety-valves are properly adjusted so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply of water to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove mud and sediment from all parts of the boilers when they are under pressure of steam, and any renter, user, or owner of a boiler, or any person or persons who tamper with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate, shall be deemed guilty of a misdemeanor.

(2) Where a boiler is constructed with lap horizontal seams on boiler, dome, or drum, a factor of four and one-half shall be used in determining the safe working pressure allowed on such boiler. But where the boilers are constructed with butt-strap horizontal seams, a factor

of four may be used in determining such safe working pressure. If boiler rests on side wall on lugs, or is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used to determine the safe working pressure allowed on boiler. Where the horizontal lap seams of boiler are exposed to the fire, a factor of five must be used to determine the safe working pressure to be allowed on such boiler. On stay bolts, if new, seven thousand five hundred pounds pressure per square inch shall be allowed. If such stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on same. On braces made of solid material, eight thousand pounds pressure per square inch shall be allowed. On welded braces or braces with only one crow-foot, six thousand pounds pressure per square inch shall be allowed. No cast iron shall be used in the construction or reinforcements of any boiler where the pressure allowed on said boiler is more than one hundred pounds per square inch.

History: Ap. p. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R. C. M. 1921; amd. Sec. 4, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "suitable relieving capacity ratings" for "suitable dimension" near the beginning of subsection (1); substituted "safety valves are properly adjusted" for "safety-valve weights are properly adjusted" in subsection (1); deleted a second paragraph of subsection (1), for text of which see parent volume; and deleted from subsection (2) a third sentence reading "But in any case the inspector may use a higher factor if the conditions are such as to warrant it."

69-1505. (2716) **Inspection of boilers—material to be used.** No boiler or steam pipe, nor any of the connections thereto, shall be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R. C. M. 1921; amd. Sec. 5, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "shall be approved" for "must be approved" in the first sentence.

69-1507. (2718) **Duty of owner to permit inspection—board action—costs and expenses.** It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified by the inspector to have said boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the board to gain access to said boiler. Any person failing to immediately comply with board directed access to said boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such

fine and imprisonment. The owner, engineer or manager of any boiler who has refused access resulting in a board order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R. C. M. 1921; amd. Sec. 6, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "engineers" and the reference to water boilers in the first sentence; inserted "operators" in the second sentence; substituted "shall notify the board to gain access to said boiler" at the end of the second sentence for "shall at once seal up the firebox in such boiler, and such seal must not be removed from the firedoor without a written order from the inspector"; substituted "failing to immediately comply with board directed access to said boiler" in the third sentence for "tampering with or removing said seal"; substituted "The owner, engineer or manager of any boiler who has refused access resulting in a board order must pay" at the beginning of the fourth sentence for "If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next regular visit of the inspector to the district where said boiler is situated, he must pay"; inserted "directed by such order" near the end of the fourth sentence; and made minor changes in phraseology.

69-1508. (2719) **Licenses required—penalty for operating without license.** No person shall be granted a license to operate steam or water boilers and steam machinery under the provisions of this article, who has not met the qualifications for licensing and found to be competent by examination to perform the duties of an engineer, and received a license so to act. Any person who operates any boiler or steam engine without first obtaining a license is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R. C. M. 1921; amd. Sec. 7, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "steam or water boilers and steam machinery" for "steam boilers or steam machinery" near the beginning of the first sentence; substituted "met the qualifications for licensing and found to be competent by examination" for "been examined by the inspector and found competent" in the first sentence; deleted "written or printed" before "license" near the end of the first sentence; deleted "steam" before "boiler" near the beginning of the second sentence; and made minor changes in phraseology.

69-1509. (2720) **Classification and licensing of engineers.** (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch gauge pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a

boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the board, accumulated in United States military services or the merchant marine service may be accepted in lieu of the operating experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other board approved institution or training program in the classification for which he is

applying may at the discretion of the board be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The board at its discretion may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R. C. M. 1921; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973.

Amendments

The 1971 amendment inserted "operation" near the beginning of subsection (1); substituted "steam or water boilers and steam machinery" for "steam machinery" in the first sentence of subsection (1); completely rewrote subsections (2) and (3), including therein the former second sentence of subsection (1); and completely rewrote the third and fourth sentences of subsection (4). For prior text, see parent volume.

The 1973 amendment reduced the ages specified in subdivisions (3) (c) (1) and (3) (c) (2) from twenty to eighteen years, and in subdivisions (3) (d) (1), (3) (d) (2) and (3) (d) (3) from twenty-one to eighteen years; and made minor changes in style.

69-1510. (2721) **Complaints and revocation of license.** Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the board to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of said engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R. C. M. 1921; amd. Sec. 9, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "or under the influence of drugs"; substituted "board" for "inspector or assistant inspector"; and made minor changes in phraseology.

69-1511. (2722) **Certificate of inspection—wrongfully issuing certificate of inspection or licenses as misdemeanor.** In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector

of boilers and safety. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is guilty of a misdemeanor. All certificates of inspection, operating certificates and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R. C. M. 1921; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973.

Amendments

The 1971 amendment substituted "inspector of boilers and safety" for "boiler inspector's office" at the end of the first sentence; deleted "steam" before "boilers" in the second sentence; and added the third sentence.

The 1973 amendment deleted "and feloniously" following "willfully" near the beginning of the second sentence; and substituted "is guilty of a misdemeanor" for "is punishable under the provisions of section 94-35-214" at the end of the second sentence.

69-1512. (2733) **Fees for inspection or examination.** (1) All fees for inspection are to be paid to the industrial accident board in accordance with the following schedule based on safety valve setting:

(a) to (g). * * * [Same as parent volume.]

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee to the industrial accident board, the board shall initiate the necessary legal action to collect said fee. Failure of any person to immediately abide with results of such board action shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the industrial accident board.

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a) to (g). * * * [Same as parent volume.]

(4) Each application shall be accompanied by a payment equal to fifty per cent (50%) of the license fee for which application is being made; said payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

In case of the failure of any applicant to successfully pass an examination, forty-five (45) days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971.

Amendments

The 1971 amendment changed the preliminary paragraph of subsection (1) to provide for payment to the industrial accident board instead of the state inspector of boilers; inserted "based on safety valve setting" at the end of the preliminary paragraph of subsection (1); substituted

"the board shall initiate the necessary legal action to collect said fee" for "said inspector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager" at the end of the first sentence of the final paragraph of subsection (1); substituted "Failure of any person to immediately abide with results of such board action" for "Any person who tampers with or removes such seal without such written order" at the beginning of the second sentence of the final paragraph of subsection (1); substituted "by the industrial accident board" for "by the inspector at the time such special inspection is made" at the end of subsection (2); inserted a new paragraph now appearing as the first paragraph of subsection (4); reduced the waiting time required by the second paragraph of subsection (4) from 90 to 45 days; deleted from the end of the section sentences reading "But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room"; and made minor changes in phraseology.

69-1513. (2724) **Review of license rejection.** If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a board review. Such request must be addressed to the board and shall be signed by the rejected applicant. Within two days after receiving such request, it is the duty of the board to notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the board receives said written request, the committee shall review and evaluate the application. The applicant may appear in person at said review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the board the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

History: En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R. C. M. 1921; amd. Sec. 12, Ch. 225, L. 1971.

Amendments

The 1971 amendment rewrote this section so as to provide for board review rather than re-examination by the inspector, and made numerous changes. For prior text, see parent volume.

69-1514. (2725) **Board decision.** After said review is completed, and if a majority of the committee decides that such applicant is entitled to the license he has applied for, the board shall without delay issue a license accordingly, but if a majority of the committee rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512.

History: En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R. C. M. 1921; amd. Sec. 13, Ch. 225, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

69-1515. (2726) **Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.** (1) This act shall not apply to boilers under federal control. The provisions of this act requir-

ing inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the board.

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the board and shall notify the board as to where said boiler will be installed and operated. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1923; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971.

Amendments

The 1971 amendment reduced the maximum pressure specified by the second sentence of subsection (1) with temperatures up to 250 degrees from 160 to 50 pounds per square inch; deleted from subsection (1) a third sentence reading "Locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article"; deleted from the beginning of subsection (2) two sentences reading "It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor"; deleted "steam" before "boiler" in three places in subsection (2); substituted references to the board for references to the boiler inspector in the first sentence of subsection (2); and made minor changes in phraseology.

69-1516. (2727) Certificates must be renewed yearly—failure to renew. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. Any engineer failing to renew his license as herein provided, or within at least thirty days after the date of expiration shall be assessed the fee for the original license of the same grade, before the license will be reissued. Any engineer failing to

renew his license within twelve months of the date of expiration, must reapply for an engineer's license as required by the provisions of section 69-1509; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have ninety (90) days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted a second sentence reading "The fee for renewal is two dollars ($2.00) in all cases"; inserted that part of the third sentence preceding the proviso; increased the time allowed for renewal after discharge from military service from sixty to ninety days; deleted a second paragraph, for text of which see parent volume; and made minor changes in phraseology.

69-1517. (2728) **Operation of boiler or steam engine without license.** It is unlawful for any person in this state to operate a stationary boiler or steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the board. The person so employing the unlicensed engineer shall immediately notify the board. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R. C. M. 1921; amd. Sec. 16, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted "railroad locomotives or other" before "engines and boilers exempted" in the first sentence; deleted "steam" before "engine or boiler" in two places; deleted "refusal to work" after "sickness" in the third sentence; deleted "operated in remote districts, which would retard the work to be performed" after "engine or boiler" in the first part of the third sentence; added "he shall have reasonable qualifications acceptable to the board" at the end of the third sentence; substituted "board" for "inspector or assistant inspector" at the end of the fourth sentence; inserted "boilers or" before "steam machinery" in the fifth sentence; and made minor changes in phraseology.

69-1518. (2729) **Repealed.**

Repeal

Section 69-1518 (Sec. 7, Ch. 32, L. 1905; Sec. 16, Ch. 30, L. 1913), relating to sale of secondhand boilers, was repealed by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 16—HOISTING ENGINES—LICENSE OF OPERATORS

Section
69-1601. Operators of hoisting engines must procure licenses.
69-1602. Application and fee for license—renewal and revocation of license.
69-1603. Scope of license—exemptions.
69-1604. First and second-class licenses—qualifications of applicant.
69-1607. Penalty for operating machinery without license.

69-1601. (2730) **Operators of hoisting engines must procure licenses.** (1) It shall be unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel in industrial operations or on construction projects, or any air compressor operated by any power without first obtaining a license therefor from the board as herein provided. Except that in emergencies the provisions of section 69-1517 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R. C. M. 1921; amd. Sec. 17, Ch. 225, L. 1971.

Amendments

The 1971 amendment designated the former provision as subsection (1); completely rewrote the first sentence of subsection (1), for previous text of which see parent volume; and added subsections (2) and (3).

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

69-1602. (2731) **Application and fee for license—renewal and revocation of license.** Application for such licenses shall be made to the board in the same manner, and the same fee shall be charged therefor as now required by law for obtaining a license to operate steam engines and boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or boilers; provided, that the board shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which the board could revoke a license to operate steam engines and boilers.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R. C. M. 1921; amd. Sec. 18, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted references to the board for references to the state boiler inspector and made minor changes in phraseology.

69-1603. (2732) **Scope of license—exemptions.** (1) A license granted under the provisions of this act shall entitle the holder thereof to operate any of the machinery named in section 69-1601, and the license shall

specify on its face such machinery, but no license issued hereunder shall authorize or qualify the person to whom issued to operate a boiler or steam engine.

(2) The provisions of this act shall not apply to hoisting engines or elevators under federal control or to operating elevators in completed private or public buildings.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R. C. M. 1921; amd. Sec. 19, Ch. 225, L. 1971.

Amendments

The 1971 amendment designated the former provisions as subsection (1); deleted former second and third sentences, for text of which see parent volume; added a new subsection (2); and made minor changes in phraseology.

69-1604. (2733) First and second-class licenses—qualifications of applicant. (1) Each applicant for a hoisting engineer's license shall meet the following minimum requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

(b) Applicants for first-class hoisting engineer's license shall:

(1) Have no less than three years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the board and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the board and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of

boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after enactment of this act, be granted a hoisting engineer's license in that classification.

History: En. Sec. 4, Ch. 104, L. 1915; re-en. Sec. 2733, R. C. M. 1921; amd. Sec. 20, Ch. 225, L. 1971; amd. Sec. 27, Ch. 94, L. 1973.

Compiler's Notes

This section as enacted contained no subsection (2).

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

The 1973 amendment reduced the minimum age specified in subdivision (1) (a) from twenty to eighteen years, and in subdivisions (1) (b) (1) and (1) (b) (2) from twenty-one to eighteen years; and made minor changes in style.

69-1605. (2734) **Repealed.**

Repeal

Section 69-1605 (Sec. 5, Ch. 104, L. 1915), relating to machinery which a licensee is qualified to operate, was repealed by Sec. 24, Ch. 225, Laws 1971.

69-1607. (2736) **Penalty for operating machinery without license.** Every person who operates any of the engines and machinery named in section 69-1601 for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R. C. M. 1921; amd. Sec. 21, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted "knowingly" before "permits any unlicensed person."

CHAPTER 17—TRACTION ENGINES—CAPACITY—INSPECTION

69-1701. Computation of capacity of steam traction engines—marking on engines.
69-1702. Inspection—fees.

69-1701. (4209) **Computation of capacity of steam traction engines—marking on engines.** The capacity or initial power of all steam traction engines or machinery propelled or operated by steam, when sold or offered for sale within this state, must be computed and determined by the drawbar horsepower; that is, the initial pulling power of such engines or machinery, and not otherwise; and such power or capacity shall be plainly engraved in figures with the letters "H. P." on a metallic templet or plate, which templet or plate shall, before such engine or machine is sold or offered for sale, be securely fastened thereto, in such manner and place and of sufficient size as to be easily seen and read. And all new engines or machinery named herein shall be engraved or branded with the shop number, which shall be in some place easily observed.

History: En. Sec. 1, Ch. 125, L. 1913; re-en. Sec. 4209, R. C. M. 1921; amd. Sec. 22, Ch. 225, L. 1971.

Amendments

The 1971 amendment inserted "steam" before "traction engines" near the beginning of the section; substituted "operated by steam" for "operated by gas, oil, or any product of oil" in the first sentence; and made a minor change in phraseology.

69-1702. (4210) **Inspection—fees.** Inspection of steam traction boilers and fees for inspection shall be in accordance with the applicable requirements of section [Title] 69, chapter 15.

History: En. Sec. 2, Ch. 125, L. 1913; re-en. Sec. 4210, R. C. M. 1921; amd. Sec. 23, Ch. 225, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "Title."

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Repealing Clause

Section 24 of Ch. 225, Laws 1971 read "Sections 69-1518, 69-1605 and 69-1703 are hereby repealed."

69-1703. (4211) **Repealed.**

Repeal

Section 69-1703 (Sec. 3, Ch. 125, L. 1913), establishing a penalty, was repealed by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE, SALE AND POSSESSION

Section
69-1931. Destructive device—explosive defined.
69-1932. Possession of destructive device or explosive with felonious intent—penalty.

69-1910, 69-1911. (2795, 2796) **Repealed.**

Repeal

Sections 69-1910, 69-1911 (Secs. 10, 11, Ch. 129, L. 1917; Sec. 8, Ch. 121, L. 1965), relating to license fees and annual inspections, were repealed by Sec. 1, Ch. 352, Laws 1973.

69-1922. (2807) **Storage of explosives in mines.**

Injured Employee's Remedies

Despite blasting company's violation of this section it could not be held liable under common-law action for negligence without an allegation of intentional injury by the defendant by deliberate infliction of harm where otherwise the remedy is within the workmen's compensation law. Enberg v. Anaconda Co., — M —, 489 P 2d 1036.

69-1927. (2812) **Careless use of explosives a misdemeanor.**

Injured Employee's Remedies

Plaintiff's complaint, alleging that a violation of the penal statute abrogates an employer's immunity from a common-law action where the injured employee is covered by workmen's compensation, fails to make a claim for relief if it does not allege intentional injury in the sense of a deliberate infliction of harm by the defendant. Enberg v. Anaconda Co., — M —, 489 P 2d 1036.

69-1930. (2815) **Repealed.**

Repeal

Section 69-1930 (Sec. 3, p. 72, L. 1893), relating to storage of kerosene, petroleum, giant caps and coal oil within unincorporated towns, and to sales after dark, was repealed by Sec. 1, Ch. 352, Laws 1973.

69-1931. Destructive device—explosive defined. (1) "Destructive device" as used in this chapter, shall include, but is not limited to, the following weapons:

(a) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(b) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(c) Any weapon of a caliber greater than .60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun or shotgun ammunition.

(d) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.

(e) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive" as used in this chapter, shall mean any explosive defined in section 69-1901, R.C.M., 1947.

History: En. Sec. 1, Ch. 304, L. 1971.

Title of Act.

An act relating to possession of explosives and destructive devices with intent to injure persons or property; setting penalties therefor.

69-1932. Possession of destructive device or explosive with felonious intent—penalty. (1) Every person who, with intent to commit a felony, has in his possession any destructive device or any explosive on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of a felony, and shall be punishable by imprisonment in the state prison for a period of not more than ten (10) years.

History: En. Sec. 2, Ch. 304, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

CHAPTER 21—BUILDING AND MOBILE HOME CONSTRUCTION STANDARDS

Section
69-2121. Definitions.
69-2122. Statement of policy—rule-making power.
69-2123. Compliance with the council's rules.
69-2124. Fees.

69-2106. State building code council, etc.

Cross-References

Council abolished and functions transferred, sec. 82A-1202(6).

69-2108. State controller to administer act.

Cross-References

Controller's functions transferred to department of justice, sec. 82A-1203(2).

69-2121. Definitions. As used in this act, unless the context clearly requires otherwise:

(1) "Council" means the state building code council, as defined by section 69-2106, R.C.M. 1947.

(2) "Mobile home" means any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit.

(3) "Recreational vehicle" means any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length.

History: En. Sec. 1, Ch. 348, L. 1971.

Title of Act

An act to establish uniform construction standards in mobile homes.

69-2122. Statement of policy—Rule-making power. (a) Mobile homes and recreational vehicles, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes and recreational vehicles, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this state to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes and recreational vehicles which are not so constructed as to provide reasonable safety and protection to their owners and users.

(b) The council shall, not later than January 1, 1972, promulgate rules and regulations embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) and American National Standards applicable to mobile homes and recreational vehicles as defined herein.

History: En. Sec. 2, Ch. 348, L. 1971.

69-2123. Compliance with the council's rules. No person, firm or corporation may manufacture, sell, or offer for sale any mobile home or recreational vehicle which has been constructed more than twelve (12) months after the effective date of this act, unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile-home or recreational-vehicle unit which has been approved by the council shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this act. All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of this act throughout the state of Montana without further inspection or fees except for zoning, utility connections and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971.

69-2124. Fees. The council shall establish a schedule of fees for the inspection of plans and specifications for mobile homes or recreational vehicles and for the inspection of individual units. The council may utilize independent testing laboratories or the agencies of other states to determine if approved models of mobile homes or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971.

CHAPTER 22—BLOOD AND BLOOD PRODUCTS

Section
69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals.
69-2204. Immunity of blood banks.
69-2205. Labeling of containers by blood banks required.

69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals. The furnishing of, and the injecting or transfusing into the human body, of whole blood, plasma, blood products, and blood derivatives, by a hospital or doctor, of any such substances, obtained by such hospital or doctor so furnishing, injecting or transfusing the same, from any source or sources which said hospital or doctor is not directly or indirectly financially interested in, or has any control over, is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose or purposes, and no physician or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital or doctor for injuries resulting from the furnishing or performing of such services.

History: En. Sec. 1, Ch. 284, L. 1971.

Title of Act

An act establishing that the use of certain whole blood, plasma, blood products, and blood derivatives by physicians and hospitals for the purpose of injecting or transfusing any of them into the human body is a service and not a sale; providing that blood banks shall not be liable for such products disbursed by them in the absence of negligence if such products have been tested by certain testing procedures and found by such tests to not be dangerous to the health of a prospective recipient, and requiring the labeling by such blood banks of such products sold.

69-2204. Immunity of blood banks. No blood bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting or transfusing of whole blood, plasma, blood products, or blood derivatives supplied by any such blood bank to any hospital or physician if such blood products so furnished have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks and by such test is not found to be dangerous to the health of the recipient of such blood products.

History: En. Sec. 2, Ch. 284, L. 1971.

69-2205. Labeling of containers by blood banks required. That each container or package containing any whole blood, plasma, blood products, and blood derivatives, sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein contained was tested as required in section 2 [69-2204] hereof, giving the date of the test and such information as is necessary to designate the type of test made.

History: En. Sec. 3, Ch. 284, L. 1971.

CHAPTER 23—ANATOMICAL GIFT ACT

69-2315. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have enacted the "Uniform Anatomical Gift Act": Alabama, Alaska, Arkansas, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

The following state has enacted provisions which are substantially similar to the Uniform Anatomical Gift Act: Louisiana.

CHAPTER 27—FIREWORKS REGULATION

Section
69-2701. Fireworks prohibited and defined for the purposes of this act.

69-2701. Fireworks prohibited and defined for the purposes of this act. a. * * * [Same as parent volume.]

b. The term "fireworks" shall mean and include any combustible, or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include sky rockets, Roman candles, Daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, sparklers or other fireworks of like construction and any fireworks containing any explosive of flammable compound or any tablets or other device containing any explosive substance. Nothing in this law shall be construed as applying to toy paper caps containing not more than twenty-five hundredths (.25) of a grain of explosive composition per cap, and to the manufacture, storage, sale

or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

c. It shall be lawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the state of Montana, the permissible fireworks herewith enumerated.

Permissible fireworks shall include dangerous articles and, more specifically, shall include and be limited to the following, but specifically excluding sky rockets, Roman candles and Daygo bombs:

(1) Helicopter type spinners, total pyrotechnic composition not to exceed twenty (20) grams each in weight;

(2) Cylindrical fountains, total pyrotechnic composition not to exceed twenty-five (25) grams each in weight. The inside tube diameter shall not exceed three-fourths (¾) inch;

(3) Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight;

(4) Wheels, total pyrotechnic composition not to exceed sixty (60) grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over one-half (½) inch;

(5) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred (100) grams each in weight;

(6) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five (5) grams;

(7) Firecrackers with soft casings, the external dimensions of which do not exceed one and one-half (1½) inches in length or one-quarter (¼) inch in diameter, total pyrotechnic composition not to exceed two (2) grains each in weight;

(8) Whistles without report, total pyrotechnic composition not to exceed forty (40) grams each in weight;

It shall be unlawful for any individual under the age of eighteen (18) to possess for sale, sell or offer for sale, within the state of Montana, permissive fireworks herein enumerated.

It shall be unlawful for any wholesaler to sell or offer for sale, within the state of Montana, fireworks except as herein defined. It shall be lawful for said wholesaler, however, to transport said fireworks within the state of Montana for sale outside of the state of Montana.

d. and e. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in the paragraph following the numbered subdivisions in subsection c from twenty-one to eighteen years, and made minor changes in style.

CHAPTER 33—GEOPHYSICAL EXPLORATION

69-3304. Surety bond required, etc.

Sealing of Shot Holes

Sealing "shot" holes by pouring excess cuttings down them and plugging the orifice with an aluminum plug by forcing it down into the hole so that the top of the plug was below plow depth, was in compliance with this section when the holes were only four and one-half inches in diameter in view of expert testimony that seismographic holes tend to slough and cave, releasing lateral support from materials around the hole and that the pressure from the weight of the earth above has a tendency to force the material toward the center, sealing the hole. Haynie v. Northern Pacific Ry. Co., — M —, 490 P 2d 715.

CHAPTER 34—SANITARIANS

Section
69-3401. Definitions.
69-3402. Administration of chapter.
69-3403. Application for registration by examination.
69-3404. Fees.
69-3405. Revocation or suspension.
69-3407. Reciprocity.
69-3408. Appeal procedure.
69-3409. Service of process.

69-3401. Definitions. "Board" means the Montana state board of health. "Council" means the sanitarians advisory council. "Sanitarian" is a person who is trained in physical, biological and sanitary sciences to carry out inspectional and educational duties in the field of environmental health. "Registered sanitarian" is a sanitarian registered in accordance with the provisions of this act. "Certificate of registration" is a document showing the name of a registered sanitarian, the date of issue, serial number, and bearing the signatures of the designated members of the department hereby authorized to grant such certificate and under the seal of the board. "Department" means the Montana state department of health.

History: En. Sec. 1, Ch. 174, L. 1959; amd. Sec. 1, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "sanitarians advisory council" for "sanitarians registration council" in the definition of "Council"; deleted "hereby created" from the end of the definition of "Council"; substituted "health" for "sanitation" at the end of the definition of "Sanitarian"; substituted "department" for "council" in the definition of "Certification of registration"; substituted "the board" for "said council" at the end of the definition of "Certificate of registration"; deleted the definitions of "Montana association of sanitarians" and "Montana joint merit council"; and added the definition of "Department."

69-3402. Administration of chapter. (1) The board shall assume jurisdiction over all activities and records of what was formerly titled the sanitarians registration council. A department staff sanitarian or sanitarians shall under guidance of the board as to matters of policy be responsible for administration of the provisions of this chapter and serve as secretary for the council. The department shall maintain a record of all registration activities and a register disclosing names, dates, and addresses of all applicants for a certificate. Such register shall constitute prima facie evidence of all matters therein entered. The board may

adopt such rules and regulations not inconsistent with this act as it determines are necessary and proper for its function and administration.

(2) The governor shall appoint a sanitarian advisory council to consult with the board in administration of statutes relating to registration of sanitarians. (a) The council shall consist of three (3) registered sanitarians living and working in Montana.

(b) Members of the first council shall serve for one (1), two (2), or three (3) years as designated by the board. After initial appointments, appointed members shall serve for three (3) year terms. Appointments for unexpired terms shall be for the remainder of the term.

(c) The council shall serve without compensation but shall be reimbursed for their actual and necessary traveling and other expenses while engaged in the business of the council.

(d) The council shall appoint a chairman and shall conduct at least two (2) regular meetings each calendar year.

History: En. Sec. 2, Ch. 174, L. 1959; amd. Sec. 2, Ch. 271, L. 1971.

Amendments

The 1971 amendment completely rewrote the section. For prior text, see parent volume.

Cross-References

Council abolished and functions transferred, sec. 82A-602(2).

Department abolished and functions transferred, secs. 82A-602 (1), 82A-604.

69-3403. Application for registration by examination. Any person, upon the payment of the fees prescribed herein, may apply to the department for registration on forms provided for that purpose. Each applicant shall submit evidence and prove to the satisfaction of the board that he meets the following qualifications for registration hereunder. (a) That he or she has qualified, as required by the board, and successfully passed the examination for sanitarian 1 classification or higher. (b) The department shall issue a certificate of registration to all applicants who meet the above qualifications. (c) An applicant for examination may, in the discretion of the board, be given a temporary certificate to practice as a registered sanitarian prior to taking the examination. The term of such certificate shall not exceed one (1) year.

History: En. Sec. 3, Ch. 174, L. 1959; amd. Sec. 3, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "department" for "council" in the first sentence and clause (b); substituted "board" for "council" in the second sentence and clause (c); deleted "one of" before "the following qualifications" in the second sentence; deleted "and the joint merit council" after "the board" in clause (a); inserted "classification" in clause (a); deleted the former clause (b); and redesignated former clauses (c) and (d) as clauses (b) and (c).

69-3404. Fees. Applicants for registration shall pay a fee of twenty dollars ($20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying the annual fee as set by the board, but not to exceed ten dollars ($10.00). All fees collected shall be paid to the board held in a special fund and shall be used to defray the cost of administration of this act in accordance with a budget developed by the board. All fees shall be due and payable on or before the first day of July for the current year for which

the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the board.

History: En. Sec. 4, Ch. 174, L. 1959; amd. Sec. 119, Ch. 147, L. 1963; amd. Sec. 4, Ch. 271, L. 1971.

Amendments

The 1971 amendment deleted "of health" after "board" and substituted "held in a special * * * the board" for "and deposited * * * registration council" in the third sentence; and substituted "board" for "council" at the end of the last sentence.

69-3405. Revocation or suspension. The board shall have the power to revoke or suspend the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice as a professional sanitarian, or upon the conviction of any crime involving moral turpitude, provided, however, that no revocation of certificate shall become effective until after a hearing, duly noticed, is held and the registrant given the opportunity to appear in person or by counsel and to answer the charges which have been filed against him with the board and to produce evidence and witnesses on his behalf and to cross-examine witnesses.

History: En. Sec. 5, Ch. 174, L. 1959; amd. Sec. 5, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "board" for "council" in two instances; and substituted "as a professional sanitarian" for "of professional sanitation" near the middle of the section.

69-3407. Reciprocity. The department shall issue a certificate of registration without examination to any person who makes application on forms prescribed and furnished by the department, pays the registration fee of twenty dollars ($20) and submits satisfactory proof that: (1) he is of good moral character; (2) he is registered as a sanitarian in a state in which the qualifications for registration are not lower than the qualifications for registration in this state at the time he applies for registration.

History: En. Sec. 7, Ch. 174, L. 1959; amd. Sec. 6, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "department" for "council" in two places.

69-3408. Appeal procedure. Any party aggrieved by any decision or act of the board may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, inclusive, R.C.M., 1947, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

History: En. Sec. 8, Ch. 174, L. 1959; amd. Sec. 7, Ch. 271, L. 1971.

Amendments

The 1971 amendment substituted "board" for "council"; and made a minor change in phraseology.

69-3409. Service of process. When any petition or complaint is filed in any court naming the board as a party, process may be served

upon the said board by delivering to and leaving with the board a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based.

History: En. Sec. 9, Ch. 174, L. 1959; amd. Sec. 8, Ch. 271, L. 1971.

for "Montana sanitarians registration council" and "council."

Amendments

The 1971 amendment substituted "board"

CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

Section
69-3502. Definitions.
69-3503. Operation of unnumbered motorboats prohibited—display of decals.
69-3504. Identification number.
69-3504.1. License decals to be displayed.
69-3505. Equipment.
69-3506. Exemption from numbering provisions of this act.
69-3508. Prohibited operation and mooring—enforcement.
69-3508.1. Discharge of waste from vessel prohibited.
69-3508.2. Penalty for discharge of waste from vessel.
69-3510. Restricted areas.
69-3512. Collisions, accidents and casualties.
69-3514. Water-skis and surfboards.
69-3516.1. Education program.
69-3517. Enforcement of act.
69-3518. Penalty.

69-3502. Definitions. As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": means every description of watercraft, unless otherwise defined by the fish and game commission of the state of Montana, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) "Motorboat" means any vessel propelled by machinery, any motor or engine of any description, whether or not such machinery, motor or engine is the principal source of propulsion, including boats temporarily equipped with detachable motors or engines, but shall not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(3) to (6). * * * [Same as parent volume.]

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act.

(8) "Certificate of number" means the certificate issued annually by the board of equalization to the owner of a motorboat, awarding such motorboat an identifying number and will contain such information as required.

(9) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(10) "License decals" mean the serially numbered license stickers issued annually by the board of equalization, and displayed as required by law.

(11) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(14) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391, and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, deleted "except for section 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" from the end of subdivision (7).

Chapter 514, Laws of 1973 abolished the distinction in subsection (1) between the definitions of "vessel" for the purposes of registration and for purposes of safety regulations; deleted from subsection (1) a definition for purposes of registration by incorporation of section 3 of Public Law 85-911; made the phrase "unless otherwise defined by the fish and game commission of the state of Montana" applicable for all purposes in subsection (1); inserted the references to motors and engines and the phrase "including boats temporarily equipped with detachable motors or engines" in subsection (2); substituted "U. S. coast guard" for "bureau of customs" near the end of subsection (2); added subsections (8) through (14); and made minor changes in style and phraseology.

69-3503. Operation of unnumbered motorboats prohibited—display of decals. Every motorboat on the waters of this state propelled by motor or engine of any description of more than eight (8) horsepower shall be properly numbered and display valid license decals. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this act, in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

History: En. Sec. 3, Ch. 285, L. 1959; amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, Ch. 514, L. 1973.

Amendments

The 1973 amendment deleted "or vessel" following "motorboat" throughout the section; substituted "motor or engine of any description" for "machinery" in the first sentence; inserted "properly" near the end of the first sentence; and inserted references to display of license decals in the first and second sentences.

69-3504. Identification number. (a) The owner of each motorboat requiring numbering by this state shall file an application for number with the state department of revenue or its designated representative, on forms approved by the state department of revenue. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of one ($1) dollar. Any alteration, change or false statement contained in the application for certificate of registration will render the certificate of number null and void. Upon receipt of the application in approved form and certificate hereinabove referred to, the state department of revenue shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The number awarded must be painted on or attached to each outboard side of the forward half of the motorboat, or if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat for which it is issued. The number awarded shall read from left to right, in Arabic numerals, in block characters of good proportion, a minimum of three (3) inches in height, excluding border or trim, and of a color which shall contrast with the color of the background, and so maintained as to be clearly visible and legible. The number shall not be placed on the obscured underside of the flared bow where the angle is such that the numbers cannot be easily seen from another vessel or ashore. No numerals, letters or devices other than those used in connection with the identifying number issued shall be placed in the proximity of the identifying number, and no numerals, letters or devices which might interfere with the ready identification of the motorboat by its identifying number shall be carried as to interfere with the motorboat's identification. The certificate of number shall be pocket size and shall be available to federal, state or local law enforcement officers at all reasonable times for inspection on the motorboat for which issued, whenever the motorboat is on waters of this state, except boat liveries are not required to have the certificate of number on board each motorboat, except that a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(b) The numbering requirements of this act shall apply to motorboats operated by dealers, manufacturers or their employees as follows:

(1) A dealer or manufacturer may apply directly to the board for one (1) identifying number and one (1) or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer.

(2) The application for a dealer's or manufacturer's identifying number shall include the name of the dealer or manufacturer and the business

address of the dealer or manufacturer. Each dealer or manufacturer shall have one (1) identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number shall be accompanied by the following fees:

(A) for the identifying number, first certificate of number, and set of license decals, five dollars ($5);

(B) for each additional certificate of number and set of license decals applied for in any application, two dollars ($2).

(4) The board shall issue certificates of number for identifying number awarded to a dealer or manufacturer in the same manner as provided in section 69-3504 (a), except that no boat shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in section 69-3504 (a) of this act, except that the number may be temporarily attached, and that the last three (3) letters shall be "DLR" for dealer and "MFR" for manufacturer; these letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer shall display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer shall use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

(c) The owner of any motorboat already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty (60) day reciprocity period provided for in section 69-3506(1) of this act. Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section.

(d) Should the ownership of a motorboat change, within a reasonable time a new application form with fee shall be filed with the state department of revenue and a new certificate of number shall be awarded in the same manner as provided for in an original award of number, provided further that the number assigned may be determined by the state department of revenue.

(e) If an agency of the United States government has in force an over-all system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this act by the board shall be in conformity therewith.

(f) The state department of revenue may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. If a person accepts the authorization, he may be assigned

a block of numbers and certificates therefor which upon award, in conformity with this act and with any rules of the board shall be valid as if awarded directly by the state department of revenue.

(g) All records of the state department of revenue made or kept under this act shall be public records. The state department of revenue shall submit to the department of law enforcement and public safety, correct copies of all certificates of number issued under this act; and the department of law enforcement and public safety shall make these records immediately available to all law enforcement offices of this state.

(h) Every certificate of number and the license decals awarded under this act shall continue in effect for a period not to exceed one (1) year, unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number and license decals shall show the date of expiration thereon and may be renewed by the owner in the same manner provided for in the initial securing of the certificate. The state department of revenue shall notify each owner of a registered motorboat of expiration of registration a reasonable time prior to expiration of registration.

(i) Certificates of number due shall expire on April 30 of each calendar year and shall no longer be of any effect unless renewed under this act.

(j) In event of transfer of ownership, the purchaser shall furnish the state department of revenue notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state under subsections (a) and (b) of this section, or of the loss, theft, destruction or abandonment of the motorboat, within reasonable time thereof. Such transfer, loss, theft, destruction or abandonment shall terminate the certificate of number for the motorboat except that in the case of a recovery from theft, or transfer of a part interest which does not affect the owner's right to operate the motorboat, the recovery or transfer does not terminate the certificate of number.

(k) A holder of a certificate of number shall notify the state department of revenue within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the state department of revenue with his new address. The state department of revenue may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(l) No number other than the number and license decal awarded to a motorboat or granted reciprocity under this act, shall be painted, attached or otherwise displayed on either side of the forward half of the motorboat.

(m) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of sections 69-3501 through 69-3518.

(n) An owner of a motorboat must notify the board, giving the motorboat's identifying number and the owner's name, within reasonable time, when that motorboat becomes documented as a vessel of the United States,

is transferred, lost, destroyed, abandoned, frauded, or within sixty (60) days after change of state of principal use.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973.

Compiler's Notes

This section was amended three times in 1973, once by Ch. 391, once by Ch. 511 and once by Ch. 514. None of the amendatory acts mentioned or entirely incorporated the changes made by either of the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all three amendments.

Amendments

Chapter 391, Laws of 1973, substituted "state department of revenue" for "board" throughout the section.

Chapter 511, Laws of 1973, substituted "department of revenue" for "board" near the end of the first sentence in subsection (a); substituted "department of law enforcement and public safety" for "registrar of motor vehicles of the state" in the second sentence of subsection (g); and made minor changes in style, phraseology and punctuation.

Chapter 514, Laws of 1973, deleted "or vessel" following "motorboat" throughout the section; deleted "accompanied by a certificate of tax of personal property showing payment of tax on the motorboat or vessel for the current year" after "application for number" in the first sentence of subsection (a); inserted the third sentence in subsection (a); substituted "each outboard side of the forward half" in the fifth sentence of subsection (a) for "each side of the bow"; inserted the latter part of the fifth sentence of subsection (a), beginning "or if there are no such sides"; substituted the sixth and seventh sentences of subsection (a) for "in such manner as may be prescribed by rules and regulations of the board, in order that it may be clearly visible"; substituted the eighth sentence of subsection (a) for a sentence reading "The number shall be maintained in legible condition"; inserted "to federal, state or local law enforcement officers" in the final sentence of subsection (a); substituted "at all reasonable times" for "at all times" in the final sentence of subsection (a); substituted "is on waters of this state" in the final sentence of subsection (a) for "is in operation"; added to the end of subsection (a) the exceptions relating to boat liveries; completely rewrote subsection (b), for previous text of which see parent volume; reduced the reciprocity period referred to in the first sentence of subsection (c) from 90 to 60 days; deleted "except that no additional or substitute number shall be issued" from the end of subsection (c); inserted "within a reasonable time" in subsection (d); inserted "board or" before "registrar" near the end of subsection (g); inserted references to license decals in subsections (h) and (l); deleted "and shall be renewed annually" before "unless sooner terminated" in the first sentence of subsection (h); substituted "Certificates of number due shall expire on April 30 of each calendar year" at the beginning of subsection (i) for "The board shall fix a day and month of the year on which certificates of number due to expire during the calendar year shall lapse"; inserted references to loss, theft and recovery in subsection (j); substituted "forward half" for "bow" near the end of subsection (l); added subsection (n); and made minor changes in phraseology.

69-3504.1. License decals to be displayed. (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display license decals. For this purpose the state department of revenue, upon receipt by said board of a certificate of tax of personal property showing payment of tax on the motorboat for the current year, shall issue a pair of decals with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the state department of revenue, and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of April 30 of the appropriate year printed thereon. The style and design shall be prescribed by the board.

(3) License decals shall be displayed only in the following manner:

One valid license decal on each side of the forward half three (3) inches aft of the identifying numbers.

History: En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsections (1) and (2).

Chapter 514, Laws of 1973, inserted "license" before "decal" throughout the section; deleted "thereon as visual proof the boat is currently registered" from the end of the first sentence in subsection (1); inserted "upon receipt by said board of a certificate of tax of personal property showing payment of tax on the motorboat for the current year" in the second sentence of subsection (1); added the second and third sentences to subsection (2); and completely rewrote subsection (3), for previous text of which see parent volume.

69-3505. Equipment. (1) Every motorboat or vessel shall have aboard:

(a) One United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided, that any person who has not reached his twelfth birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under twenty-six (26) feet in length while such motorboat or vessel is in motion. The fish and game commission shall have the authority to designate waters and time of year on these waters where all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(b) When in operation or at anchor or moored away from a docking facility between sunset and sunrise all vessels shall display lights as prescribed by the board.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system prescribed by the board which shall be used and be capable of removing resulting gases prior to, and during the time the motorboat or vessel is occupied by a person.

(d) All motorboats shall carry the minimum number of United States coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a United States coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) The board may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements

in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(4) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(5) A vessel may not be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage may be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the board of health and environmental sciences.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 511 and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. The compiler has made a composite section embodying the changes made by both amendments. In so far as there may be a conflict with respect to the age specified in subdivision (1) (a), the compiler has used the language of Ch. 514, the later in date of approval.

Amendments

Chapter 511, Laws of 1973, substituted "under the age of thirteen (13) years" in subdivision (1) (a) for "twelve (12) years of age or younger"; redesignated former subdivisions (1) (e), (1) (f), (1) (g) and (2) as (2), (3), (4) and (5) respectively; substituted "board of health and environmental sciences" for "state board of health" at the end of subsection (5); and made minor changes in style and phraseology.

Chapter 514, Laws of 1973, inserted "motorboat or" in the preliminary clause of subsection (1); substituted "United States coast guard approved personal flotation device" near the beginning of subdivision (1) (a) for "life preserver, buoyant vest, ring-buoy or buoyant cushion of the type approved by the commandant of the United States coast guard"; substituted "who has not reached his twelfth birthday" in subdivision (1) (a) for "twelve (12) years of age or younger"; added the second sentence to subdivision (1) (a); completely rewrote subdivision (1) (b), for text of which see parent volume; inserted "prescribed by the board" after "ventilation system" in subdivision (1) (c); inserted "be used and" before "be capable of removing" in subdivision (1) (c); inserted "entirely" before "open construction" in subdivision (1) (d); inserted "or safety" after "navigation" in two places near the end of subdivision (1) (f); and made minor changes in style and phraseology.

69-3506. Exemption from numbering provisions of this act. A motorboat shall not be required to be numbered under this act, if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided, that such vessel shall not have been within this state for a period in excess of sixty (60) consecutive days. After sixty (60) consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number and license decal.

(2) A motorboat from a country other than the United States temporarily using the waters of this state.

(3) A motorboat whose owner is the United States, a state or subdivision thereof.

(4). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973.

Amendments

The 1973 amendment deleted "or vessel" following "motorboat" in the preliminary clause; reduced the period during which a motorboat from another state may be used without obtaining a Montana certificate of number from 90 to 60 days; added the second sentence to subdivision (1); and substituted "motorboat" for "vessel" near the beginning of subdivisions (2) and (3).

69-3508. Prohibited operation and mooring—enforcement. (a) No person shall operate or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, or other contrivance, in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate, or knowingly permit any person to operate, any motorboat or vessel, or manipulate any water-skis, surfboard, or similar device, or other contrivance, while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

(c) and (d). * * * [Same as parent volume.]

(e) No person shall make reckless approach to, departure from or passage by a dock, ramp, diving board or float.

(f). * * * [Same as parent volume.]

(g) No person shall moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States or the board nor in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor shall any person deface, remove or destroy any such buoy, beacon or other authorized navigational marker maintained in the waters of this state.

(h) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment, such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973.

Amendments

The 1973 amendment inserted "or other contrivance" in subsections (a) and (b); inserted "departure from" in subsection (e); and added subsections (g) and (h).

69-3508.1. Discharge of waste from vessel prohibited. No person shall discharge or cause, permit or suffer to be discharged, any garbage, refuse, waste or sewage from any vessel into or upon the waters of any stream, river or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965; amd. Sec. 8, Ch. 514, L. 1973.

Amendments

The 1973 amendment substituted "vessel" for "boat."

69-3508.2. Penalty for discharge of waste from vessel. A person who is convicted of a violation of section 69-3508.1 shall be punished by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

History: En. Sec. 3, Ch. 169, L. 1965; amd. Sec. 9, Ch. 514, L. 1973.

Amendments

The 1973 amendment substituted "section 69-3508.1" for "this act"; and substituted "not less than twenty-five dollars ($25) nor more than one hundred dollars ($100)" for "not more than twenty-five dollars ($25)."

69-3510. Restricted areas. (a) and (b). * * * [Same as parent volume.]

(c) Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(d) No person, without permission, or unless unavoidable shall operate or knowingly permit any person to operate a vessel within fifty (50) feet of a person engaged in fishing.

History: En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973.

Amendments

The 1973 amendment changed the coloring for buoys marking swimming areas in subsection (c) from yellow and red colored buoys to white buoys with international orange markings; increased the distance specified in subsection (d) from 20 to 50 feet; and made a minor change in style.

69-3512. Collisions, accidents and casualties. (a). * * * [Same as parent volume.]

(b) The board shall prepare and distribute to each sheriff's office and state game wardens of this state, a standardized accident report form; any person involved in a collision, accident or other casualty involving a death, disappearance, personal injury or property damage in excess of one hundred dollars ($100.00) shall immediately report such collision, accident or other casualty to the sheriff's office or state game warden of the county in which the collision, accident or casualty occurred and fill out a standardized accident report form.

(c). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 285, L. 1959; amd. Sec. 11, Ch. 514, L. 1973.

Amendments

The 1973 amendment inserted references to state game wardens in two places in subsection (b); and inserted "disappearance" following "casualty involving a death" in the middle of subsection (b).

69-3514. Water-skis and surfboards. (a) No person shall operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water-skis, a surfboard, or similar device or other contrivance unless said operator is at least twelve (12) years of age, and further providing that there is a second person, at least twelve (12) years of age, in the vessel to act as observer to observe the person being towed, nor shall any person engage in water-skiing, surfboarding, or similar activity, or towing some other contrivances at any time between the hours from one hour after sunset to one hour before sunrise; provided, however, that the provisions of this subsection do not apply to a performer engaged

in a professional exhibition or a person or persons engaged in a regatta or race authorized under this act.

(b). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973.

Amendments

The 1973 amendment inserted "motorboat or" near the beginning of subsection (a); inserted "for the purpose of" before "towing a person" in subsection (a); inserted references to "other contrivances" in two places; and inserted the age requirement for the operator, and the requirement for an observer.

69-3516.1. Education program. The board shall co-ordinate a statewide boat safety education program.

History: En. Sec. 13, Ch. 514, L. 1973.

Title of Act

An act to amend sections 69-3502, 69-3503, 69-3504, 69-3504.1, 69-3505, 69-3506, 69-3508, 69-3508.1, 69-3508.2, 69-3510, 69-3512, 69-3514, 69-3517, and 69-3518, R. C. M. 1947, all relating to the operation, occupancy, licensing and certification of motorboats and other vessels; providing for disposition of funds from licensing and fines arising from motorboat operation; providing for protection of navigational markers; prescribing penalties for violation; and providing an effective date.

69-3517. Enforcement of act. It shall be the duty of the fish and game commission to enforce the sections of this law. The state fish and game director shall employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of sections 69-3501 through 69-3518.

History: En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973.

Amendments

The 1973 amendment inserted "and all United States coast guard law enforcement officers" near the end of the third sentence.

69-3518. Penalty. Violations of any section of this act unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than fifteen dollars ($15) or more than five hundred dollars ($500.00) or by imprisonment up to six (6) months, or by both such fine and imprisonment. All fine and bond forfeitures shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund; the moneys shall be used only by the fish and game commission for enforcement of sections 69-3501 through 69-3518.

History: En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973.

Amendments

The 1973 amendment inserted "unless otherwise specified" near the beginning of the first sentence; increased the minimum fine from $10.00 to $15.00; increased the maximum imprisonment from 30 days to six months; and added the second sentence.

Effective Date

Section 16 of Ch. 514, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 4, 1973.

CHAPTER 36—AMBULANCE SERVICE

Section
69-3604. Findings and purposes.
69-3605. Definitions.
69-3606. License required.
69-3607. Fee—term of license.
69-3608. Cancellation or denial of licenses—procedure.
69-3609. Rules and regulations—co-operative agreements.
69-3610. Inspections.
69-3611. Authority of board to issue subpoenas.
69-3612. Penalty.
69-3613. License fee—supersedes other fees.

69-3604. Findings and purposes. The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services as defined in section 2 [69-3605] of this act, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being, and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971.

Title of Act

An act to establish minimum uniform standards and regulations for ambulance services as required by public interest.

69-3605. Definitions. As used in this act, unless the context clearly indicates otherwise: (1) "Ambulance" means any privately or publicly owned motor vehicle that is especially designed or constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with the provisions of this act, but does not include any such motor vehicle owned by, or operated under the direct control of the United States or the state of Montana.

(2) "Ambulance service" means any person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Executive officer" means the executive officer of the Montana state department of health or his designated official.

(8) "Board" means the board of health of the state of Montana.

(9) "License officer" means the executive officer of the Montana state department of health or his designated official.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(11) "Person" means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose or organization of any kind, including any governmental agency other than the United States or the state of Montana.

History: En. Sec. 2, Ch. 387, L. 1971.

69-3606. License required. (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right, unless conditions exist as specified by this act which are grounds for a cancellation or denial of a license. The applicant may apply for a hearing and judicial review as specified by this act upon being denied a license or upon cancellation.

History: En. Sec. 3, Ch. 387, L. 1971.

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

69-3607. Fee—term of license. (1) There shall be paid to the department with each application for a license or for renewal of a license, an annual license fee of five dollars ($5). The department shall deposit fees with the state treasurer to the credit of the state general fund.

(2) Each license shall expire on December 31 following its date of issue, unless cancelled for cause. Renewal may be obtained by paying the required annual license fee. The license shall not be transferable nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 387, L. 1971.

69-3608. Cancellation or denial of licenses—procedure. (1) The executive officer may cancel any license if he finds that the licensee has violated provisions or regulations of this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the executive officer of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by the executive officer, shall be a bar to prosecution for violation.

(2) The executive officer shall not deny or cancel any license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved.

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or cancelled. In such case, the licensee shall make written request to the executive officer of the department for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of provisions or regulations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for

a period not to exceed one (1) year, during which time a license would not be denied the licensee nor would his license be canceled. Subsequent exceptions may be granted the licensee, each for a period not to exceed one (1) year, and each after a hearing before the board.

(3) Upon cancellation of a license, the license certificate shall be returned to the executive officer for destruction or deletion as the executive officer may direct in his notice of cancellation.

(4) Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him.

(5) Whenever the department shall furnish evidence to the county attorney of any county in this state, the county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 387, L. 1971.

69-3609. Rules and regulations—co-operative agreements. (1) The board shall prescribe and enforce rules and regulations which are necessary to carry out the provisions of this act. These rules and regulations shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(2) No rules or regulations shall be effective until a public hearing has been held for review of the rules and regulations. Notice of the public hearing shall be sent by ordinary mail at least thirty (30) days before the hearing to all Montana licensed operators along with a copy of the proposed regulations.

(3) The department may enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

(4) Pursuant to the provisions of this act, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American Red Cross first aid or its equivalent. Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the board shall not prescribe and enforce any rules and regulations related to ambulance equipment and training which exceed these requirements.

History: En. Sec. 6, Ch. 387, L. 1971.

69-3610. Inspections. (1) The department shall make all necessary investigations and inspections for enforcement of this act. Each authorized representative shall make regular inspections as the rules and regula-

tions of the board may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing at such times and in such manner as the board may direct.

(2) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [69-3605] of this act for the purpose of making inspections.

History: En. Sec. 7, Ch. 387, L. 1971.

69-3611. Authority of board to issue subpoenas. In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses, and take testimony of any person within the state of Montana.

History: En. Sec. 8, Ch. 387, L. 1971.

69-3612. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for the first offense, and not less than seventy-five dollars ($75) nor more than two hundred dollars ($200) for the second offense; and for third and subsequent offenses, by a fine of not less than two hundred dollars ($200) nor more than five hundred dollars ($500) or imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 387, L. 1971.

69-3613. License fee—supersedes other fees. Payment of the license fee stipulated in this act shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 387, L. 1971.

Separability Clause

Section 11 of Ch. 387, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 12 of Ch. 387, Laws 1971 read "Effective date. This act is effective January 1, 1972."

CHAPTER 39—AIR POLLUTION

Section
69-3923. Classification of property for taxation.

69-3907. Administration—state board of health.

Cross-References

State department abolished and functions transferred, secs. 82A-602 (1), 82A-604.

69-3908. Air pollution control advisory council, etc.

Cross-References

Council continued after reorganization, sec. 82A-606.

69-3923. Classification of property for taxation. (1) * * * [Same as parent volume.]

(2) The decision, whether the facilities, machinery or equipment are utilized to reduce, eliminate, control or prevent air pollution, shall be made by the director and approved by the state department of revenue.

History: En. Sec. 20, Ch. 313, L. 1967; amd. Sec. 47, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of subsection (2).

CHAPTER 40—REFUSE DISPOSAL AREAS

69-4005. State department of health to approve disposal area.

Cross-References

State department abolished and functions transferred, secs. 82A-602 (1), 82A-604.

CHAPTER 41—STATE BOARD OF HEALTH

Section
69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons.

69-4103. State board of health, etc.

Cross-References

Board renamed and continued, sec. 82A-605(1).

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

69-4106. Functions, powers and duties of state board.

Cross-References

Board functions transferred to department of health and environmental sciences, sec. 82A-603(2).

69-4110. Functions, powers and duties of department.

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

69-4116. Repealed.

Repeal

Section 69-4116 (Sec. 16, Ch. 197, L. 1967), requiring administration of phenylketonuria tests to newborn infants, was repealed by Sec. 6, Ch. 227, Laws 1973. For new law, see secs. 69-6710 to 69-6713.

69-4117. Schoolhouses—rules for lighting, heating, etc.

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected

within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the state board or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967; amd. [Sec. 1], Ch. 336, L. 1971.

Amendments

The 1971 amendment inserted "jails" in the first sentence of subsection (1).

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

CHAPTER 42—OCCUPATIONAL HEALTH

Section
69-4206. Short title.
69-4207. Declaration of policy and purpose.
69-4208. Definitions.
69-4209. Administration—state department of health.
69-4210. Advisory committee.
69-4211. Powers of board.
69-4212. Permits.
69-4213. Inspection.
69-4214. Emissions prohibited.
69-4215. Enforcement.
69-4216. Emergency procedure.
69-4217. Variances.
69-4218. Hearings and judicial review.
69-4219. Confidentiality of records.
69-4220. Application for federal aid.
69-4221. Penalties.

69-4201 to 69-4203. Repealed.

Repeal

Sections 69-4201 to 69-4203 (Secs. 19 to 21, Ch. 197, L. 1967), relating to duties and powers of the state department of health with respect to occupational diseases, were repealed by Sec. 18, Ch. 316, Laws 1971. For present law, see section 69-4206 et seq.

69-4205. Repealed.

Repeal

Section 69-4205 (Sec. 23, Ch. 197, L. 1967), providing a penalty, was repealed by Sec. 18, Ch. 316, Laws 1971. For present law, see sec. 69-4221.

69-4206. Short title. This act shall be known and may be cited as the "Occupational Health Act of Montana."

History: En. Sec. 1, Ch. 316, L. 1971.

Title of Act

An act providing for the conservation of the health of workers of the state; providing for prevention, abatement, and control of occupational diseases; providing penalties for violation; and repealing sections 69-4201, 69-4202, 69-4203, and 69-4205, R. C. M., 1947.

69-4207. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such conditions at the work place as will protect human health and safety, and to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this act to provide for a co-ordinated statewide program of abatement and control of occupational

diseases, for an appropriate distribution of responsibilities among the state and local units of government, and to provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 316, L. 1971.

69-4208. Definitions. As used in this act:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

(3) "Occupational disease" means an illness, impairment or disability that:

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

(5) "Work place" is any place or location where a person is gainfully employed.

(6) "Occupational health" is a field of specialization concerned with those problems of health maintenance, productivity and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Threshold limit values" shall mean airborne concentrations of substances to which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect.

(8) "Pollutant" shall mean air contaminants, heat, noise, vibration and ionizing radiation and nonionizing radiation.

(9) "Sanitary facilities" shall mean toilets, showers, dressing rooms, lunch rooms, sewage disposal systems and potable water systems.

(10) "Department" shall mean the Montana state department of health.

(11) "Board" shall mean the Montana state board of health.

(12) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

(13) "Advisory committee" means the occupational health advisory committee created by this act.

(14) "Director" means the director of the occupational health program, a position created by this act.

(15) "Executive officer" means the chief administrative officer of the state department of health.

History: En. Sec. 3, Ch. 316, L. 1971.

69-4209. Administration—state department of health. Except as otherwise provided, the department, acting under the guidance of the board

as to matters of policy, is responsible for administration of the provisions of this act. The executive officer shall appoint a director of the occupational health program to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the board. The executive officer may delegate to any employee of the department such duties and functions as he deems necessary for the proper and efficient administration of this act, and the executive officer shall have the authority with the approval of the board and within the limitation of funds, to hire additional employees and to discharge same for cause.

History: En. Sec. 4, Ch. 316, L. 1971.

Cross-References

State department abolished and functions transferred, secs. 82A-602 (1), 82A-604.

69-4210. Advisory committee. (1) There is hereby created an occupation health advisory committee hereinafter called the advisory committee. The advisory committee shall consist of seven (7) members as follows:

(a) A representative of labor.
(b) A representative of agriculture.
(c) A representative of the manufacturing industry.
(d) A practicing physician licensed in Montana.
(e) A practicing dentist licensed to practice in Montana.
(f) A practicing registered professional engineer.
(g) A lay person.

The chairman shall be elected by the advisory committee from among this number.

(2) Members are appointed by the governor with the advice and consent of the senate. The terms of members shall be four (4) years except that the two (2) initially appointed members shall serve for one (1) year; two (2) shall serve for two (2) years; two (2) shall serve for three (3) years and one (1) shall serve for four (4) years as designated by the governor at the time of making the appointment.

(3) The seven (7) members appointed by the governor to serve on the advisory committee shall each be paid, in addition to actual travel expense, twenty-five dollars ($25) per day for each day of actual services in the performance of their duties; and all members of the advisory committee shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the advisory council. The expense and per diem of the members who are appointed by the governor shall be paid from funds made available to the department.

(4) The advisory committee shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the advisory committee. Notice of the time and place for all meetings shall be given in advance to each member of the advisory committee by the

secretary. A majority of the members of the advisory committee shall constitute a quorum.

(5) The secretary of the advisory committee shall be a member of the staff of the state department of health, designated by the executive officer. The secretary shall keep all records of meetings of, and actions taken by, the committee. He shall keep the advisory committee advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined by the advisory committee, not inconsistent with rules, regulations and policies adopted by authority of this act or specific authority otherwise given the advisory committee.

(6) The advisory committee may consider standards, rules, and regulations as provided in this act and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act.

History: En. Sec. 5, Ch. 316, L. 1971.

69-4211. Powers of board. In addition to any other powers conferred on it by law, the board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place or places designated by the board. The board may designate the director as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce them by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions.

(5) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of occupational disease.

(7) Encourage voluntary co-operation by persons and affected groups to achieve the purpose of this act.

(8) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, preventions, abatement, and control.

(9) Determine by means of field studies and sampling the degree of health hazard at any work place in the state.

(10) Establish threshold limit values of airborne contaminants for the state as a whole within ninety (90) days of passage of this act.

(11) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases.

(12) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups.

(13) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out any of the functions of this act. Funds received by the board pursuant to this section shall be deposited in the state treasury to the account of the board.

History: En. Sec. 6, Ch. 316, L. 1971.

Cross-References

Department of health and environmental sciences to notify department of labor and industry of alleged violations, sec. 82A-602(1)(b).

Enforcement functions transferred to department of labor and industry, sec. 82A-1003(2).

69-4212. Permits. (1) The board may, by rule or regulation, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971.

62-4213. Inspection. (1) Any duly authorized officer, employee, or representative of the board may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, where any person or persons are, or will be, employed to ascertain the state of compliance with this act and rules in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized representative of the board who requests entry for purposes of inspection, and who presents appropriate credentials. No person shall obstruct, hamper, or interfere with any such inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971.

69-4214. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of var-

ious pollutants from any source necessary to prevent, abate or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule or regulation.

History: En. Sec. 9, Ch. 316, L. 1971.

69-4215. Enforcement. (1) Whenever the director has reason to believe that a violation of any provision of this act or rule made pursuant thereto has occurred, he may cause written notice to be served upon the alleged violator or violators, and the facts alleged to constitute a violation thereof, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. Any such order shall become final unless, no later than thirty (30) days after the date of notice is received, the person or persons named therein request in writing a hearing before the board. Upon receipt of such a request, the board shall hold a hearing.

(2) If, after a hearing held pursuant to subsection (1) of this section, the board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions involved or for the taking of such other corrective action as it may deem appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) In lieu of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator or violators appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or

(b) Initiate action pursuant to section 16 [69-4221] of this act.

(4) Nothing in this act shall prevent the board from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with any hearing held pursuant to this section, the board may, and upon application by any party shall, compel the attendance of witnesses and the production of evidence on behalf of all parties.

History: En. Sec. 10, Ch. 316, L. 1971.

69-4216. Emergency procedure. (1) Any other provisions of law to the contrary notwithstanding, if the director finds that a generalized

hazard at any work place exists and that it creates an emergency requiring immediate action to protect human health, the director shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of any such order, the director shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order of the director.

(2) In the absence of any such generalized condition as that referred to in subsection (1) of this section, if the director finds that emissions from any operation is causing imminent danger to human health, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for the provisions of section 10 [69-4215] of this act. In such event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 10 [69-4215] shall apply.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, whether such power is conferred by statute or constitutional provisions or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971.

69-4217. Variances. (1) Any person who owns or is in control of any plant, building, structure process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker.

(b) Compliance with the rules and regulations from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, and the worker or workers involved.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with

rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 13 [69-4218] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 11 [69-4216] of this act to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971.

69-4218. Hearings and judicial review. (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 11 [69-4216] of this act.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

(a) The board acted without or in excess of its powers.

(b) The order was procured by fraud.

(c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing

arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made error of law prejudicial to the appellant.

(5) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 13, Ch. 316, L. 1971.

69-4219. Confidentiality of records. (1) Any records or other information concerning pollutants or operations which are furnished to or obtained by the board, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the board in the administration of this act, unless the owner shall expressly agree to their publication or availability to the general public.

(2) Nothing contained in this section shall be construed to prevent the use of such records or information by the board in compiling or publishing analyses or summaries relating to the general condition at the work place, provided that such analyses or summaries do not identify any owner or operator or reveal any information made otherwise confidential by the provisions of this section.

History: En. Sec. 14, Ch. 316, L. 1971.

69-4220. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971.

69-4221. Penalties. (1) Any person who violates the provisions of this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from any source determined as provided herein to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars ($1,000). Each day of violation shall constitute a separate offense.

(2) Proceedings under this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the name of the state any and all such enforcement proceedings.

(3) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to persons or property and to maintain any section of other appropriate proceeding therefor.

(4) All fines collected shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971.

Separability Clause

Section 17 of Ch. 316, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 18 of Ch. 316, Laws 1971 read "Sections 69-4201, 69-4202, 69-4203 and 69-4205, R. C. M., 1947, are hereby repealed."

CHAPTER 43—TUBERCULOSIS CONTROL

69-4304. Functions, powers and duties of state department.

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

CHAPTER 44—VITAL STATISTICS

Section
69-4428.1. Disinterment—permit.

69-4403. Functions, powers and duties of state department of health.

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

69-4428.1. Disinterment—permit. (1) A body, after burial, may be disinterred for reinterment or transport, upon obtaining a permit therefor from the local registrar of the jurisdiction where the body is interred.

(2) Administration of the act shall be in the department of health and environmental sciences, which shall adopt rules accordingly. The rules shall provide that as a right to the permit the applicant make a showing of reasonable cause for the disinterment.

(3) This act provides a supplementary procedure for disinterment of a dead body, and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973.

Title of Act

An act providing for permits for disinterments of dead bodies and for administration by the department of health and environmental sciences.

CHAPTER 45—LOCAL BOARDS OF HEALTH

Section
69-4509. Functions, powers and duties of local boards of health.
69-4510. Local health officers—powers and duties.

69-4509. Functions, powers and duties of local boards of health. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the executive officer and fix his salary;

(b) to (k). * * * [Same as parent volume.]

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971.

Amendments

The 1971 amendment inserted "or a person with a master's degree in public health or equivalent and appropriate experience as determined by the executive officer" in subdivision (1)(a).

69-4510. Local health officers—powers and duties. (1) Local health officers, or their authorized representatives, shall:

(a) to (d). * * * [Same as parent volume.]

(e) before the first day of January, April, July and October, give a report to the local board of sanitary conditions in the county, city, city-county or district, together with a detailed account of his activities on forms, and containing information required by the department;

(f) to (j). * * * [Same as parent volume.]

(2). * * * [Same as parent volume.]

(3) A local health officer, who is a physician, may be placed in charge of a communicable disease hospital, but a local health officer, who is a physician, is not required to act as a physician to the indigent. A local health officer, who is not a physician, shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971.

Amendments

The 1971 amendment inserted "who is a physician" in two places in the first sentence of subsection (3); added the second sentence to subsection (3); and made minor changes in phraseology and punctuation.

CHAPTER 46—VENEREAL DISEASE

Section
69-4610. Information concerning infected persons—release.

69-4602. Education campaigns by state department of health, etc.

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

69-4610. Information concerning infected persons—release. Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

(1) personnel of the state department of health; or

(2) a physician who has written consent of the person whose record is requested.

For the purposes of this section the term "information" includes all knowledge or intelligence, and all communications of all knowledge or in-

telligence, oral or written, or in record form, and also includes, but is not limited to, information concerning the location or nature of the activities or work of all local, state, or federal employees, or officers, engaged in venereal disease eradication work, and such personnel are privileged and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work. The purpose of this section is to protect and preserve the principle of confidentiality in venereal disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all venereal disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: En. Sec. 106, L. 1967; amd. Sec. 1, Ch. 135, L. 1971.

Amendments

The 1971 amendment added the paragraph following the numbered clauses.

69-4611. Serological tests for syphilis.

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

69-4612 to 69-4615. Repealed.

Repeal

Sections 69-4612 to 69-4615 (Secs. 108 to 111, Ch. 197, L. 1967), relating to testing of pregnant women for syphilis, were repealed by Sec. 11, Ch. 228, Laws 1973. For new law, see secs. 69-6701 to 69-6709.

CHAPTER 47—SHODDY CONTROL

67-4705. Inspections by health authorities.

Cross-References

State department of health abolished and functions transferred, sec. 82A-602 (1).

CHAPTER 48—WATER POLLUTION

Section
69-4801. Public policy of the state.
69-4802. Definitions.
69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned.
69-4805. Administration of chapter.
69-4806. Pollution unlawful—permits.
69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date.
69-4808.2. Duties of board of health.
69-4808.3. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds.
69-4809.1. Duties of department of health.
69-4809.2. Power to inspect and monitor—authority.
69-4810. State water pollution advisory council—creation—members, appointment and term of office.
69-4811. State water pollution advisory council—vacancy in office, filling—compensation of members.
69-4812. State water pollution advisory council—officers—meetings—quorum—designating of deputy by member.
69-4813. Powers and duties of the council.
69-4814. Hearings by board—notice.

69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing.
69-4820.1. Additional enforcement remedies.
69-4821. Judicial remedies—review by district court—appeal to supreme court.
69-4822. Confidentiality of records.
69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order—purpose and construction of chapter.
69-4824. Emergencies.
69-4824.1. Additional emergency powers.
69-4825. Injunctions.
69-4826. Action by other parties.
69-4827. Co-operation with the council, board, and department.

69-4801. Public policy of the state. (1). * * * [Same as parent volume.]

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from dams at the effective date of this act are "natural."

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971.

Amendments

The 1971 amendment substituted the second and third sentences of subsection (2) for "However, municipal or industrial pollution upstream shall not be considered natural."

69-4802. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) and (2). * * * [Same as parent volume.]

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, dead animals, sediment, and all other substances that may pollute state waters;

(4). * * * [Same as parent volume.]

(5) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any state waters, as exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, or to livestock, wild animals, birds, fish or other wildlife, provided, however, that any discharge which is permitted by Montana water quality standards is not "pollution" for the purposes of this chapter.

(6) and (7). * * * [Same as parent volume.]

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewerage systems and treatment work;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; this section shall not apply

to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters;

(10). * * * [Same as parent volume.]

(11) "Council" means the state water pollution advisory council created by this act;

(12) "Board" means the state board of health;

(13) "Department" means the state department of health;

(14) "Executive officer" means the chief administrative officer of the state department of health;

(15) "Director" means the director of water pollution control, a position created by this act;

(16) "Local department of health" means the staff, including any health officers, employed by a county, city, city-county, or district board of health.

(17) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(18) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(19) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(20) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973.

Amendments

The 1971 amendment, inserted "dead animals, sediment" in subdivision (3); redefined the meaning of pollution in subdivision (5); added "this section shall not apply * * * to any other state waters" in subdivision (9); and added subdivisions (12) through (16).

The 1973 amendment added subdivisions (17) through (20).

69-4803. Repealed.

Repeal

Section 69-4803 (Sec. 123, Ch. 197, L. 1967), relating to classification of waters for industrial use, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned. This chapter applies to drainage or seepage from all sources including that from artificial, privately owned ponds or lagoons if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior version, see parent volume.

69-4805. Administration of chapter. Except as otherwise provided, the department, acting under the supervision of the board as to matters of policy, is responsible for administration of the provisions of this chapter.

The executive officer shall appoint a director of water pollution control to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the board. The director shall have a minimum of five (5) years of responsible experience in water pollution control or aquatic ecology programs. His salary shall be set in accord with other members of the staff with the same degree of responsibility and training. He will be responsible for the administration of the water pollution control act within the limitations of funds and personnel assigned.

The executive officer shall, in the absence of a director of water pollution control, assign another member of the staff to perform the duties and exercise the powers of a director.

The department may use personnel of the state and local departments of health as necessary to administer the provisions of this act.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

Cross-References

Department abolished and functions transferred, secs. 82A-602 (1), 82A-604.

69-4806. Pollution unlawful—permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R. C. M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department;

(a) construct, modify, or operate a disposal system which discharges to any state waters; or

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or

(3) violate any limitation imposed by a current permit.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971.

Amendments

The 1971 amendment combined former paragraphs (2) (a) and (2) (b) into new paragraph (2) (a); deleted a paragraph (2) (c) reading "increase the volume or strength of sewage, industrial wastes, or other wastes in excess of the permissive discharges specified under any existing permit"; redesignated former paragraph (2) (d) as (2) (b); deleted "new" before "outlet" in present paragraph (2) (b); added subdivision (3); and made minor changes in phraseology and style.

69-4807. Repealed.

Repeal

Section 69-4807 (Sec. 127, Ch. 197, L. 1967; Sec. 1, Ch. 277, L. 1969), relating to issuance and revocation of permits, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date. (1) If the department denies an applica-

tion for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971.

Title of Act

An act to revise the Water Pollution Control Act by placing administration of the act with the department of health under policy guidance from the board of health; redefining the meaning of pollution; broadening the activities under which a permit must be gained under section 69-4806, R. C. M. 1947; defining the duties of the board of health and department of health; including as a member of the state water pollution advisory council, the commissioner of agriculture, deleting representative of agriculture, adding a livestock feeder, a representative from labor, a supervisor of a soil and water conservation district, a representative of an organization concerned with water recreation and a representative of an organization concerned with fishing for sport; changing the name of the state water pollution control council to the state water pollution advisory council and redefining its function; providing for a director of water pollution control; enacting a new hearing and appeals procedure; adopting a new emergencies procedure; amending sections 69-4801, 69-4802, 69-4804, 69-4805, 69-4806, 69-4810, 69-4811, 69-4812, 69-4813, and 69-4814, R. C. M. 1947, and repealing sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818 and 69-4819, R. C. M. 1947.

It is the intent of the Montana legislative assembly that all provisions of this act be codified in Title 69, chapter 48, R. C. M. 1947.

69-4808. Repealed.

Repeal

Section 69-4808 (Sec. 128, Ch. 197, L. 1967), relating to duties of the state board of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4808.2. Duties of board of health. (1) The board shall:

(a) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(b) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(c) review from time to time, at intervals of not more than three years, established classifications of waters and standards of water purity and classification, provided that

(1) such classifications, standards, and rules as have been adopted by the state water pollution control council under section 133, chapter 197 of the Laws of 1967 [69-4813] shall be deemed, without necessity of a hearing, to have been initially adopted by the board.

(2) in revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 133, chapter 197 of the Laws of 1967 [69-4813].

(3) the board shall require that any state waters whose existing quality is better than the established standards as of the date on which such standards become effective be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of such waters, and

(4) the board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increase source of pollution to high quality waters, referred to in (3) immediately above, to provide the degree of waste treatment necessary to maintain that existing high water quality;

(d) advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution;

(e) make rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(f) make rules governing the issuance, denial, modification, or revocation of permits, provided, however, that:

(1) the rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that

(2) the rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three years and subject to no extension, if the department finds that the issuance of such a permit is proper for obtaining compliance with the applicable standards, that

(3) the rules shall provide that the department may revoke any permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and that

(4) any person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), R. C. M. 1947, to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately said classification, as defined in section 69-4802 (7), R. C. M. 1947, prior to the issuance of a permit by the department;

(g) hold any hearings necessary for the proper administration of this chapter;

(h) make rules for the administration of this chapter; and

(i) bring actions in court for the enforcement of this chapter; and

(j) promulgate and adopt pretreatment standards for wastewater discharged into a municipal disposal system, promulgate and adopt effluent standards as defined in section 69-4802 (20), and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and from other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973.

Amendments

The 1973 amendment inserted subdivision (1) (j).

69-4808.3. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds. (1) The department of health and environmental sciences is designated as the state agency which shall administer and control all funds to be appropriated for the purpose of aiding local governments not entitled to state matching funds under the provisions of section 69-4808.1 for construction of water pollution control facilities, but which are now, under the provisions of the Federal Water Pollution Control Act amendments of 1972 entitled to reimbursable federal grant funding.

(2) This act applies to only publicly owned treatment works on which construction was initiated after June 30, 1966, but before July 1, 1970.

(3) The department of health and environmental sciences shall promulgate rules for the use of the funds.

(4) Any funds appropriated shall in no case exceed twenty-five per cent (25%) of the total cost of the project.

(5) Nothing in this act shall result in any such project receiving state funds where fund participation from all sources, federal and state, shall be in excess of eighty per cent (80%) of the cost of such projects.

History: En. Sec. 1, Ch. 122, L. 1973.

Title of Act

An act designating the department of health and environmental sciences as the agency to administer state funds to be used for aiding local governments which were not entitled to state matching funds under the provisions of section 69-4808.1, R. C. M. 1947, for construction of water pollution control facilities.

69-4809. Repealed.

Repeal

Section 69-4809 (Sec. 129, Ch. 197, L. 1967), relating to powers and duties of the state department of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4809.1. Duties of department of health. (1) The department shall:

(a) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) examine and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) collect and furnish information relating to the prevention and control of water pollution; and

(e) conduct or encourage necessary research and demonstrations concerning water pollution.

(f) issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973.

Amendments

The 1973 amendment deleted a subsection (2) granting powers now covered by section 69-4809.2 (2) and granting the power to issue, modify, or revoke abatement orders.

69-4809.2. Power to inspect and monitor—authority. (1) In order to carry out the objectives of this act and to effectively monitor the discharge of sewage, industrial wastes and other wastes into state waters, the department may require the owner or operator of any point source to:

(a) establish and maintain records;

(b) make reports;

(c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;

(d) sample effluents using specified monitoring methods at designated locations and intervals;

(e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property and have access to and copy any records required under this act, inspect any monitoring equipment or method required under subsection (1)(c), and sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973.

Title of Act

An act to grant additional powers to the department of health and environmental sciences relating to acquisition of information and enforcement of remedies for the purpose of complying with the 1972 amendments to the Federal Water Pollution Control Act; and amending sections 69-4802, 69-4808.2, 69-4809.1 and 69-4823, R. C. M. 1947.

69-4810. State water pollution advisory council—creation—members, appointment and term of office. There is a state water pollution advisory council whose members are:

(1) the executive officer of the state department of health;

(2) the state fish and game director;

(3) the director of the Montana water resources board;

(4) the commissioner of agriculture;

(5) eight (8) members appointed by the governor for terms of four (4) years as follows:

(a) a representative of industry concerned with the disposal of inorganic waste;

(b) a representative of industry concerned with the disposal of organic waste;

(c) a livestock feeder;

(d) a representative of municipal government;

(e) a representative of an organization concerned with fishing for sport;

(f) a representative from labor;

(g) a supervisor of a soil and water conservation district;

(h) a representative of an organization concerned with water recreation.

History: En. Sec. 130, Ch. 197, L. 1967; amd. Sec. 8, Ch. 21, L. 1971.

Amendments

The 1971 amendment substituted "advisory" for "control" in the introductory sentence; substituted "Montana water resources board" for "water conservation board" in subdivision (3); inserted the present subdivision (4); and redesignated former subdivision (4) as subdivision (5); increased the number of members appointed under subdivision (5) from four to eight; substituted "a livestock feeder" for "a representative of agriculture" in paragraph (5) (c); and added paragraphs (e) through (h) to subdivision (5).

Cross-References

Council continued and renamed, sec. 82A-607.

69-4811. State water pollution advisory council—vacancy in office, filling—compensation of members. Terms of council members holding office on the effective date of this act shall not be affected. An appointment to an expired term shall be for four (4) years. An appointment to an unexpired term shall be for the remainder of the term. The eight (8) appointed members shall receive twenty dollars ($20) per day plus actual

and necessary expenses incurred in performing their duties. Expenses shall be paid by the department from funds appropriated and allocated to water pollution control.

History: En. Sec. 131, Ch. 197, L. 1967; amd. Sec. 9, Ch. 21, L. 1971.

Amendments

The 1971 amendment changed the number of appointed members to receive compensation from four to eight; and made a minor change in phraseology.

69-4812. State water pollution advisory council—officers—meetings—quorum—designating of deputy by member. (1) The council shall select a chairman from among its members. The executive officer shall designate a member of the staff of the department of health to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971.

Amendments

The 1971 amendment substituted "member of the staff of the department of health" for "member of the public health engineering staff of the department."

69-4813. Powers and duties of the council. The council may by majority report, minority report, or report of one or more members of the council, make recommendations to the board concerning any matters relating to the administration of this act.

History: En. Sec. 133, Ch. 197, L. 1967; amd. Sec. 11, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Cross-References

Council functions transferred to department of health and environmental sciences, sec. 82A-603(1).

69-4814. Hearings by board—notice. Before streams are classified or standards established or modified, or rules made, revoked or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them and any rules proposed to be made, revoked or modified shall be published at least once a week for three (3) consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than thirty (30) days prior to first publication to comment on the proposed action.

At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under section 13 [69-4820] of this act.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971.

Amendments

The 1971 amendment inserted "or rules made, revoked or modified" in the first

and second sentences; inserted "daily" before "newspaper of general circulation"; substituted "board" for "council" in two instances; substituted "proposed action" for "classification or standard" at the end of the second sentence; added the last sentence of the first paragraph and the present second paragraph; and made a minor change in punctuation.

69-4815 to 69-4819. Repealed.

Repeal

Sections 69-4815 to 69-4819 (Secs. 135 to 139, Ch. 197, L. 1967), relating to procedure for rehearing, appeal and injunction, were repealed by Sec. 22, Ch. 21, Laws 1971.

69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing. (1) Whenever the department has reason to believe that a violation of this chapter or any rule made under it has occurred, it shall cause written notice to be served personally or by mail upon the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of any corrective action which the department proposed to require, and the time within which such action is to be taken. For the purposes of this chapter, service by mail shall be deemed complete on the day of mailing.

(2) In a notice given under part (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. Such hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct such a hearing. His request shall be in writing and shall be filed with the executive officer no later than thirty (30) days after service of a notice under subsection (1) of this section. If such a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held pursuant to the provisions of this section, it shall be public and shall, if the board deems it practicable, be held in any county in which the violation is alleged to have occurred. The board shall permit all parties to respond to the notice served under subsection (1), to present evidence and argument on all issues, and to conduct cross-examination required for full disclosure of the facts. The board shall keep a stenographic record of the hearing and at least one (1) copy of any written exhibits put in evidence.

(5) A representative of the board may administer oaths, examine witnesses, and issue notices of the hearing including subpoenas requiring the testimony of witnesses and the production of evidence. Witnesses shall receive the same fees and mileage as in civil actions. In case of failure to obey a notice of hearing or subpoena, the district court where the hearing is held has jurisdiction upon request by the board to issue an order re-

quiring a person to appear and testify or produce evidence, and failure to obey shall be punished as contempt of district court.

(6) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. The order shall be accompanied by a statement of the board's findings, reasons, and conclusions upon all material issues of fact, law, or discretion. It shall state the date or dates by which any violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(7) In addition to or instead of issuing an order, the board may initiate appropriate action for recovery of a penalty pursuant to section 17 [69-4823] of this act.

History: En. Sec. 13, Ch. 21, L. 1971.

69-4820.1. Additional enforcement remedies. (1) In addition to all remedies created by this act, the department is authorized to take appropriate enforcement action to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) Any person violating a condition, limitation, standard or other requirement established pursuant to this section may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized employee of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973.

69-4821. Judicial remedies—review by district court—appeal to supreme court. (1) Any person who has exhausted all administrative remedies available before the department and board and who is aggrieved by an order of the board may, within twenty (20) days after the date of the order, petition for review by the district court of the county in which the alleged source of pollution is located.

(2) An action for review shall be initiated by delivering a copy of a written petition for review to the executive officer of the board, and by filing the original of the petition with the clerk of the court in which review is sought. The petition shall specify the order or orders review of which is sought and shall state the grounds of the petition. When the petition is filed with the clerk of the court, the district court has jurisdiction of the action. As soon as possible in the ordinary course of business and within thirty (30) days after receipt of the petition by the board, the board shall certify to the district court the entire record and proceedings, including all evidence received in the form of documents and other exhibits and a transcript of such testimony taken by the board as any party shall request.

(3) Any person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervener is a party for the purposes of this chapter.

(4) The attorney general shall represent the board if requested, or the board may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(5) Neither the state nor the board need give a bond or make a deposit for costs upon an action for review by a district court or upon any subsequent appeal.

(6) The review by the district court shall be based solely on the record of the hearing before the board. That record shall include the notice given pursuant to section 13 (1) [69-4820 (1)] of this act, any testimony transcribed pursuant to subsection (2) of this section, any exhibits filed with the board, any motions or pleadings which were submitted to the board and any rulings made by the board with respect to them, the order under review, the statement of the board accompanying the order, and any relevant document filed in the proceeding. To the extent necessary in respect to the issues, the court shall determine whether the order of the board was (a) constitutional, (b) within the statutory jurisdiction and powers of the board, (c) issued pursuant to procedure required by law, (d) supported by substantial evidence on the whole record or such portions of the record as may be cited by the parties, and (e) within the reasonable discretion of the board. The court shall then as appropriate, affirm, modify, or reverse the order of the board or remand the case to the board for further proceedings. The court may, if appropriate, issue an injunction directing compliance with the order of the board as affirmed or modified.

(7) Any party may appeal from the decision of the district court to the supreme court of Montana in the manner provided for civil cases.

(8) The initiation of an action for review or the taking of an appeal shall not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe

1. that refusal to grant a stay will cause serious harm to the affected party, and

2. that any violation found by the board

(a) will not continue, or

(b) if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

If the court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971.

69-4822. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, tend to weaken his competitive position shall be confidential unless he expressly agrees to its publication or availability to the general public or unless such information is introduced as evidence in a hearing before the board. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential; except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information. The board may use any information in compiling or publishing analyses or summaries relating to water pollution, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidental by this section.

History: En. Sec. 16, Ch. 21, L. 1971.

69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order—purpose and construction of chapter. (1) A person who violates any rule, permit, effluent standard, or order issued pursuant to the provisions of this act shall be guilty of an offense and subject to a civil penalty not to exceed ten thousand dollars ($10,000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars ($25,000) per day of violation or by imprisonment for not more than one year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty

thousand dollars ($50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action pursuant to [sub] section (1) of this section does not bar enforcement of this chapter or of rules or orders issued pursuant to it by injunction or other appropriate remedy. The board shall institute and maintain any and all such enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate and control the pollution of state waters. This chapter shall not be construed to abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor shall any provision of this chapter or any act done by virtue of it be construed as estopping the state or any municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) All fines collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment for not more than six (6) months, or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973.

Amendments

The 1973 amendment deleted "any provision of this chapter other than section 16 of this act, or" before "any rule" near the beginning of subsection (1); substituted "civil penalty" for "fine" near the end of the first sentence of subsection (1); increased the maximum daily penalty specified in subsection (1) from $1,000 to $10,000; substituted the reference to section 69-4806 near the beginning of subsection (2) for a reference to section 69-4823; inserted "or any pretreatment standard established pursuant to this act" in the first sentence of subsection (2); increased the maximum daily fine specified by the first sentence of subsection (2) from $1,000 to $25,000; added to the first sentence of subsection (2) the provision for imprisonment; added the second sentence to subsection (2); substituted "to the state general fund" at the end of subsection (5) for "to the credit of the department, to be used to alleviate pollution for which no person subject to action by the department or board is responsible"; added subsections (6) and (7); and made minor changes in phraseology.

69-4824. Emergencies. Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order such person

to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise. Notice of the order shall conform to the requirements of section 13 (1) [69-4820 (1)] of this act so far as practicable; the notice shall indicate that the order is an emergency order. Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than five (5) days thereafter, unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in section 13, subsections (4), (5), and (6) [69-4820 (4), (5), (6)] of this act. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in section 13 (6) [69-4820 (6)] of this act. An action for review of the order of the board may be initiated in the manner specified in section 15 [69-4821] of this act. The initiation of such an action or taking of an appeal shall not stay the effectiveness of the order, unless the court shall find that the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 18, Ch. 21, L. 1971.

69-4824.1. Additional emergency powers. Notwithstanding any other provisions of this act, the department upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973.

69-4825. Injunctions. The board may bring an action for an injunction against the continuation of any alleged violation which has been the basis of suspension or revocation of a permit by the department or against any person who fails to comply with an emergency order issued by the department by virtue of section 18 [69-4824] of this act or any final order of the board. The court to which the board applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the board are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: En. Sec. 19, Ch. 21, L. 1971.

69-4826. Action by other parties. Any person, association, corporation or agency of the state or federal government may apply to the board protesting any violation of this chapter. The board shall thereupon direct the department to investigate the alleged violation. The department shall make the investigation and make a written report to the board and to the person, association, corporation or agency which made the protest.

History: En. Sec. 20, Ch. 21, L. 1971.

69-4827. Co-operation with the council, board, and department. The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local department of health, shall co-operate with the council, board and department, in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

History: En. Sec. 21, Ch. 21, L. 1971.

Repealing Clause

Section 22 of Ch. 21, Laws 1971 read "Sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818, and 69-4819, R. C. M. 1947, are repealed."

Separability Clause

Section 23 of Ch. 21, Laws 1971 read "It is the intent of the legislative assembly that, if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 49—PUBLIC WATER SUPPLY

69-4903. Functions, powers and duties of state board of health.

Cross-References

State department of health abolished and functions transferred, secs. 82A-602 (1), 82A-604.

CHAPTER 50—SANITATION IN SUBDIVISIONS

Section
69-5001. Public policy of the state.
69-5002. Definitions.
69-5003. Filing of map or plat with county clerk and recorder.
69-5005. Rules for administration and enforcement of chapter.
69-5006. Request for hearing.
69-5007. Enforcement.
69-5008. Penalties.
69-5009. Records of state and other agencies.

69-5001. Public policy of the state. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses; and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973.

Amendments

The 1973 amendment inserted the reference to solid waste disposal; and added the final two clauses, beginning with "to protect the quality and potability."

69-5002. Definitions. As used in this chapter unless the context clearly indicates otherwise the following words or phrases shall have the following meanings:

(1) "Subdivision" means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less, exclusive of public roadways, in size, without regard to

the method of description thereof, in order that the title or possession of the parcels or any interest therein may be sold, rented, leased, or otherwise conveyed either immediately or in the future, and shall include any resubdivision of land; and shall further include any condominium or areas providing multiple space for camping trailers, house trailers or mobile homes; provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivision so created shall show all of the parcels segregated from the original tract whether contiguous or not.

(a) "Subdivision" shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated.

(2) "Board" means the board of health and environmental sciences.

(3) "Department" means department of health and environmental sciences.

(4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of water or the disposition of sewage or solid waste until the department has approved plans for those facilities.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973.

Amendments

The 1973 amendment completely rewrote this section, including subdivision (1); and added subdivisions (2) through (6).

69-5003. Filing of map or plat with county clerk and recorder. (1) A person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision when the status of the subdivision is conditional; and a county clerk and recorder may not accept a subdivision plat for filing until:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(2) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

69-5005. Rules for administration and enforcement of chapter. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(e) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(f) standards and technical procedures applicable to water systems;

(g) standards and technical procedures applicable to solid waste disposal;

(h) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973.

Amendments

The 1973 amendment divided the section into subsections (1) and (2); substituted "department" for "state board" at the beginning of subsection (1); substituted "adopt reasonable rules" for "make rules" in subsection (1); inserted the reference to solid waste disposal in subsection (2); inserted "distance from

lakes, streams, and wells" in subsection (2); added "and the quality of life for uses relating to agriculture, industry, recreation, and wildlife" at the end of subsection (2); added subsection (3); and made minor changes in phraseology.

69-5006. Request for hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities the person who is aggrieved by such denial may request a hearing before the board. Such hearings will be held pursuant to the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 5, Ch. 509, L. 1973.

Title of Act

An act to amend sections 69-5001, 69-5002, 69-5003 and 69-5005, R. C. M. 1947, by broadening the statement of public policy to include solid waste disposal and to refer to quality of water for all uses; revising the definition of subdivision; adding other definitions; revising the provisions for making rules and standards; requiring approval of subdivision plats and plans and specifications by the department of health before filing with county clerk and recorder; providing for enforcement proceedings and hearings on alleged violations; providing remedies and sanctions relating to violations; providing for use of records and co-operation of other agencies; and providing for effect of invalidity of part of act.

69-5007. Enforcement. (1) If a written complaint alleging violation is made to the department, or if the department has reason to believe that a person has violated this act or any rule thereunder, and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act [82-4201 to 82-4225]. In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in the act.

History: En. Sec. 6, Ch. 509, L. 1973.

Compiler's Notes

As enacted, this section contained no subsection (2).

69-5008. Penalties. (1) A person violating any provision of the act or any rule or order issued under this act is guilty of an offense and subject to a fine of not to exceed one thousand dollars ($1,000).

(2) Action under subsection (1) of this section does not bar enforcement of this act or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies. This act does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this chapter or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973.

69-5009. Records of state and other agencies. The department may require the use of records of all state, county and municipal agencies and may seek the assistance of those agencies. State, county and city officers and employees, including local health officers and sanitarians, shall

co-operate with the board and the department in furthering the purposes of this act, so far as is practical and consistent with their own duties.

History: En. Sec. 8, Ch. 509, L. 1973.

Separability Clause

Section 9 of Ch. 509, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

CHAPTER 51—CADAVERS

Section
69-5104. Qualifications to perform autopsies—written report of findings.

69-5104. Qualifications to perform autopsies—written report of findings. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy, upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital, or skilled nursing facility, to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967; amd. Sec. 1, Ch. 158, L. 1973.

Amendments

The 1973 amendment inserted in the second sentence the clause providing for reports to the attending physician and hospital facilities; and made minor changes in style.

CHAPTER 52—HOSPITALS AND HEALTH CARE FACILITIES

Section
69-5201. Definitions.
69-5203.1. Unlawful use of term "nursing."
69-5213. Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences.

69-5201. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Hospital" means any health care facility licensed by the department of health and environmental sciences to provide, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care. A health care facility in order to be licensed as a hospital must have an organized medical staff; shall provide twenty-four (24) hour nursing care by licensed professional nurses and shall be in compliance with the regulations for licensed hospitals as promulgated and adopted by the state department of health and environmental sciences.

(2) "Hospital related facility" means a facility licensed by the department of health and environmental sciences to provide any or all of

the following: diagnosis; treatment; medical or nursing care or medically related rehabilitation services. Such facilities include, but are not limited to, outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcohol and drug dependency centers and half-way houses. A health care facility in order to be licensed as a "hospital related facility" shall be in compliance with the regulations, for the specific category of facility, as promulgated and adopted by the state department of health and environmental sciences.

(a) "Outpatient facility" means a place, located in or apart from a hospital, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana, and which makes provision for its patients to receive a reasonably full range of physical or mental diagnostic and treatment services.

(i) "Outpatient facility—A" is operated as an organizational component of a hospital and may establish observation beds. "Observation beds" are those beds established for use by an outpatient recovering from minor surgery or other treatment and will be occupied for a period of time not in excess of six (6) hours.

(ii) "Outpatient facility—B" is operated apart from a hospital and may not include observation beds.

(b) "Public health centers" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(c) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision including: medical services and evaluation; and psychological, social and vocational services and evaluation.

(d) "Long-term care facility" means a place which provides skilled nursing care to a total of two (2) or more persons or personal care to more than two (2) persons, who by reason of illness or disability are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and may be defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services twenty-four (24) hours a day.

(ii) "Intermediate care facilities—A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities—B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two (2) or more of the following services: skilled nursing care and intermediate care—A and/or B.

(v) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(e) "Infirmary" means a facility located in a university, college, government institution, or industry, for the treatment of the sick or injured.

(i) "Infirmary—A" provides outpatient and inpatient care.

(ii) "Infirmary—B" provides outpatient care only.

(3) "Person" means any individual, firm, partnership, association or corporation, or governmental unit.

(4) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision.

(5) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(6) "Health care facility" means a hospital, hospital related facility or long-term care facility.

History: En. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973.

Amendments

The 1971 amendment inserted a new subdivision (3) (c) defining "intermediate care facilities"; redesignated former subdivisions (c) to (e), inclusive of subsection (3) as subdivisions (d) to (f), inclusive; and inserted "intermediate care facilities" in subdivision (3) (f), formerly subdivision (3) (e).

The 1973 amendment completely rewrote this section, supplying definitions for new terms.

69-5203.1. Unlawful use of term "nursing." It is unlawful for any facility, operating in this state, to use the word "nursing" in its name, signs, advertisements, etc., unless that facility does, in fact, provide twenty-four (24) hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973.

Title of Act

An act to revise chapter 52 of Title 69 by broadening the provisions of and redefining the terms used under the section of chapter entitled "definitions"; providing a new section in the chapter with respect to unlawful use of term in connection with name, signs and advertisements of facilities; revising the provisions for making rules; and amending sections 69-5201 and 69-5213, R. C. M. 1947.

69-5213. Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences. (1) The department shall promulgate, adopt and publish rules and minimum standards for licensure of all hospitals and hospital related facilities.

(2) Rules relating to building, equipment and fire and life safety shall be covered by the state building code.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973.

Amendments

The 1973 amendment completely rewrote subsections (1) and (4) (now (2)); and deleted former subsections (2) and (3). For prior law, see parent volume.

69-5214. Hospital and long-term care facility advisory council, etc.

Cross-References

Council abolished, sec. 82A-609(9).

69-5219.1. Repealed.

Repeal

Section 69-5219.1 (Sec. 2, Ch. 290, L. 1969), relating to annual registration of facilities with the state department of health, was repealed by Sec. 1, Ch. 335, Laws 1973.

CHAPTER 53—HOSPITALS, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION

69-5302. State department of health as principal state agency, etc.

Cross-References

State department abolished and functions transferred, sec. 82A-602 (1).

CHAPTER 54—CESSPOOLS, SEPTIC TANKS, AND PRIVIES

Section
69-5401. License required.
69-5402. Application for license—form and contents.
69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.
69-5404. Vehicle of licensee—marking.
69-5405. Permit from local health officer—examination—fee.
69-5407. License not required of municipalities.
69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.

69-5401. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks or privies, and disposal of waste therefrom unless licensed by the state department of health and the license validated by the health officer or local sanitarian in each county where business is to be conducted. The state department of health may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the state board of health.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971.

Amendments

The 1971 amendment inserted "and disposal of waste therefrom" in the first sentence; added "and the license validated by the health officer or local sanitarian in each county where business is to be conducted" at the end of the first sentence; and made a minor change in phraseology.

Cross-References

State department of health abolished and functions transferred, secs. 82A-602 (1), 82A-604.

69-5402. Application for license—form and contents. Application for a license is made to the state department of health on application forms procured from the local health officer or sanitarian in the county of applicant residence. The application shall show:

(1) the name in full, and if a partnership, the name of each partner;

(2) place of business and the counties in which business is to be conducted;

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971.

Amendments

The 1971 amendment added "on application forms procured from the local health officer or sanitarian in the county of applicant residence" at the end of the first sentence; added "and the counties in which business is to be conducted" at the end of subdivision (2); and made a minor change in phraseology.

69-5403. Licenses—title—numbering—duration—transfer prohibited — fees, disposition. Licenses issued by the state department of health shall be titled "Montana Sanitary Licensee," and numbered consecutively beginning with the number ten (10). Licenses expire on December 31 of each calendar year. Licenses are not transferable. The fee for each license is twenty-five dollars ($25) payable at the time of application for license. Twenty dollars ($20) of the fee shall be deposited with the county treasurer in the county of licensee residence and five dollars ($5) forwarded with the application to the state department of health. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this act. The state department of health shall return the license to county of licensee residence for issue.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971.

Amendments

The 1971 amendment increased the license fee from $5.00 to $25; added "payable at the time of application for license" at the end of the fourth sentence; substituted the fifth, sixth, seventh and eighth sentences for a sentence reading "Fees shall be deposited in the state general fund"; and made a minor change in phraseology.

69-5404. Vehicle of licensee—marking. Persons licensed shall paint on the side of each vehicle using the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. ..... (insert number of license)." License numbers shall be at least one and one-half (1½) inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971.

Amendments

The 1971 amendment substituted "using" for "used" after "each vehicle."

69-5405. Permit from local health officer—examination—fee. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a validation signature on the license from the local health officer or sanitarian, having jurisdiction in each county in which the business will be conducted. The license shall be invalid until said validation signature is affixed. The validation signature shall be affixed only after satisfactory evidence of the applicant's knowledge of sanitary principles, laws and ordinances; reliability in observing sanitary laws; and ability to clean the septic tank, cesspool or privy without endangering human health or safety and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971.

Amendments

The 1971 amendment substituted "validation signature on the license" for "permit" in the first sentence; substituted "or sanitarian" for "or his authorized representative" after "local health officer" in the first sentence; added "in each county in which the business will be conducted" at the end of the first sentence; inserted a new second sentence; substituted "The validation signature shall be affixed" for "The permit shall be issued" at the beginning of the present third sentence; substituted "evidence" for "examination" in the present third sentence; added "and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations" at the end of the third sentence; deleted two final sentences reading "The permit shall contain the name of the ap-

plicant, date of cleaning, name and address of the owner of the cesspool, septic tank or privy, and the place and means of disposing of the waste. The person issuing the permit shall be paid a fee of one dollar ($1.00)"; and made minor changes in phraseology and punctuation.

69-5407. License not required of municipalities. The license provisions of this chapter do not apply to any county or municipality or other local, state or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state or federal governmental agencies shall comply with rules adopted by the state board of health for cleaning cesspools, septic tanks, or privies, and disposal or wastes from cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971.

Amendments

The 1971 amendment inserted references to other local, state and federal government agencies in the first and second sentences; added "and disposal or wastes from cesspools, septic tanks or privies" at the end of the section; and made a minor change in phraseology.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor. State and local health officers or sanitarians, are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than one hundred dollars ($100), imprisoned for not more than thirty (30) days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971.

Amendments

The 1971 amendment inserted references to sanitarians in two places after references to health officers.

Effective Date

Section 8 of Ch. 76, Laws 1971 read: "This act is effective January 1, 1972."

CHAPTER 55—PUBLIC SWIMMING POOLS AND BATHING PLACES

69-5504. Sanitation—supervision by state department of health.

Cross-References

Department of health abolished and functions transferred, sec. 82A-602 (1).

CHAPTER 56—TOURIST CAMPGROUNDS AND TRAILER COURTS

Section
69-5601. Definitions.
69-5602. Rules—adoption by state board of health.
69-5603. License from state department of health required—inspections.
69-5604. Application for license—form and contents—license fee—duration of license.
69-5605. Inspection of grounds.
69-5607. Violations and penalty—disposition of fines.

69-5601. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Tourist campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes.

(2) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park or mobile home park upon which two (2) or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

(3) "Board" means the state board of health and environmental sciences.

(4) "Department" means the state department of health and environmental sciences.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973.

Amendments

The 1973 amendment divided the former section into the preliminary clause and subdivision (1); combined two sentences of subdivision (1) into one by deleting "The term includes places" at the beginning of the former second sentence; substituted "tents" in subdivision (1) for "cabins or tents, trailer courts, and similar public places"; added "or park individual trailers or truck trailers for camping and sleeping purposes" at the end of subdivision (1); and added subdivisions (2) to (5).

69-5602. Rules—adoption by state board of health. The department shall adopt rules for construction and operating tourist campgrounds and trailer courts to ensure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973.

Amendments

The 1973 amendment substituted "department" for "state board of health"; and inserted "construction and" and "and trailer courts."

69-5603. License from state department of health required—inspections. A person operating a tourist campground or trailer court shall:

(1) obtain a license from the department;

(2) permit inspections by state, local health officers, sanitarians or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973.

Amendments

The 1973 amendment inserted "or trailer court" in the preliminary clause; deleted the former subdivision (2) requiring posting of state board of health rules; renumbered subdivision (3) as (2) and inserted "sanitarians or other authorized persons" in subdivision (2).

69-5604. Application for license—form and contents—license fee—duration of license. Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of ten dollars ($10). Licenses expire on December 31 of the year in which they are issued. Fees collected by the department shall be deposited in the state general fund.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973.

Amendments

The 1973 amendment increased the application fee from five dollars to ten dollars and added the fourth sentence.

69-5605. Inspection of grounds. The department or local health officer or sanitarian shall:

(1) inspect tourist campgrounds and trailer courts during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians or other authorized persons as necessary.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973.

Amendments

The 1973 amendment deleted former subsection (1) providing for denial or revocation of licenses; deleted the numerical designation for former subsection (2); inserted "or local health officer or sanitarian" in the preliminary clause; redesignated former subdivisions (2) (a) and (2) (b) as (1) and (2); inserted references to trailer courts in subdivisions (1) and (2); and deleted former subdivision (2) (c), providing for a $5 license fee.

69-5607. Violations and penalty—disposition of fines. A person violating provisions of this act, or rules adopted by the department, is guilty of a misdemeanor. On conviction he shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973.

Amendments

The 1973 amendment substituted "department" for "state board" in the first sentence; inserted "or trailer court" in the second sentence; and made minor changes in style.

Separability Clause

Section 7 of Ch. 383, Laws 1973 read "It is the legislative intent that if any section, subsection, sentence, clause or provision of the act is held invalid, the remainder of the act shall not be affected."

CHAPTER 58—CONTROL OF IONIZING RADIATION

69-5804. State radiation control agency.

Cross-References

State department of health abolished and functions transferred, secs. 82A-602 (1), 82A-604.

69-5805. Radiation advisory committee.

Cross-References

Committee abolished, sec. 82A-609(8).

CHAPTER 59—WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

Section

69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification.
69-5908. Application for operator's certificate—payment of fee—use of proceeds.
69-5910. Rules and regulations of board.

69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification. (1) The governor of the state of Montana shall appoint a board of certification to advise and assist the director in the administration of the certification program. The water and waste water operators

certification board shall be attached to the state board of health and shall serve as an advisory board to the state board of health in actions relating to the qualifications of water and waste water treatment plant operators. The board shall be composed of seven (7) persons as follows:

(a) to (e). * * * [Same as parent volume.]

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1. Ch. 306, L. 1971.

Amendments

The 1971 amendment inserted the second sentence, attaching the certification board to the state board of health, in subsection (1).

Cross-References

Board renamed and continued in department of professional and occupational licensing, sec. 82A-1602(25).

Department of health abolished and functions transferred, secs. 82A-602 (1), 82A-604.

Director of environmental sanitation replaced on board, sec. 82A-1606(3).

69-5908. Application for operator's certificate—payment of fee—use of proceeds. Any person desiring to engage in the operation of a water treatment plant, water distribution system or waste water treatment plant shall first file an application with the board for a proper certificate. The board shall charge a fee of the same amount as the license cost set forth in section 69-5909, for the filing of each application by any person and shall not act upon any application until such fee has been paid. All filing and certification fees collected hereunder shall be deposited with the state treasurer in the "Water and Waste Water Operators Certification Examining Board Account" in the state department of health earmarked revenue fund and shall be used to pay the expenses of the board as set forth in this act and for no other purpose. Moneys may be invested in accordance with procedures of investment of state moneys. In granting of such certificates, the board shall have due regard for the interest of the state of Montana to protect the drinking water supplies and the quality of its water.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971.

Amendments

The 1971 amendment inserted "state department of health" in the third sentence; inserted the fourth sentence; and made a minor change in phraseology.

69-5910. Rules and regulations of board. The board shall make such rules and regulations as are reasonably necessary to carry out the intent of this act. Before such rules and regulations become official, they shall be approved by the state board of health. The rules and regulations shall include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 69-5904, provisions establishing qualifications of applicants, procedures for examination of candidates and such other provisions as are necessary for the administration of this act.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971.

Amendments

The 1971 amendment inserted the second sentence.

Separability Clause

Section 4 of Ch. 306, Laws 1971 read: "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held invalid, the remainder of this act shall continue in full force and effect."

CHAPTER 60—REFUSE DISPOSAL DISTRICTS

Section
69-6002. Definitions.
69-6004. Action by city or town council—effect—notice.
69-6005. Written protest—hearing—effect.
69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference.
69-6007. Service fees—maintenance assessments—disposal fee.
69-6010. Powers and duties of board.
69-6012. Joint districts.
69-6013. Duty of county attorney—conflict of interest.

69-6002. Definitions. As used in this act unless the context indicates otherwise:

"Commissioners" means the board of county commissioners.

"Family residential unit" means the residence of a single family.

"Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

"Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

"Board" means board of directors as provided for in section 69-6009, R. C. M., 1947, and section 4 [69-6012] of this act.

History: En. Sec. 2, Ch. 71, L. 1969; amd. Sec. 1, Ch. 136, L. 1971.

Amendments

The 1971 amendment added the definition of "board."

69-6004. Action by city or town council—effect—notice. (1) Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city.

(2) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, a notice describing the general characteristics of the collection system and estimated costs; designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district; and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office. The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper; posted in three (3) public places within the boundaries of the proposed district; and a copy mailed by first class mail to every person, firm, or

corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973.

Amendments

The 1973 amendment divided the section into numbered subsections; rearranged and rephrased the language in subsection (2); and added at the end of subsection (2) the clause providing for mailing notice to property owners on the assessment list.

69-6005. Written protest—hearing—effect. At any time within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within [which] such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed service is made by the owners of more than fifty (50) per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district. The commissioners may adjourn said hearings from time to time.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973.

Amendments

The 1973 amendment substituted "notice provided in section 69-6004" for "passage of the resolution of intention" in the first sentence of the first paragraph.

69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference. When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be suffi-

cient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973.

Amendments

The 1973 amendment substituted "provided in section 69-6004" for "of the passing of the resolution of intention" near the beginning of the first paragraph.

69-6007. Service fees—maintenance assessments—disposal fee. To defray the cost of maintenance and operation of said refuse disposal district, the board, shall establish a fee for service with approval of the county commissioners. This fee shall be assessed to all units in the district that are receiving a service for the purpose of maintenance and operation of said district. The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced. In no case shall the fee for disposal service exceed one half (½) the total fee for both collection and disposal services. The month the service begins the department of revenue or its agents shall ensure that the amount of this fee is placed on the tax notices to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property. All fees and other moneys received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created. Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Fees and other moneys collected by joint county refuse disposal districts may be administered by one (1) county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "board" for "commissioners" in the first sentence; added "with approval of the county commissioners" at the end of the first sentence; substituted a new second sentence for a sentence reading "The commissioners shall assess the entire cost of maintenance and operation of said district on each family residential unit that is receiving this service"; inserted "The fees shall be based upon a family residential unit, and" at the beginning of the third sentence; added the fifth through ninth sentences; and made minor changes in phraseology.

The 1973 amendment substituted "department of revenue or its agents" for "county assessor" in the fifth sentence in order to implement article VIII, section 3 of the 1972 constitution; and substituted "shall ensure that the amount of this fee is placed" in the fifth sentence for "shall place the amount of this fee."

69-6010. Powers and duties of board. The board of every refuse disposal district established and organized under and by virtue of this act shall have the powers and duties with the approval of the county commissioners of all counties involved:

(1) to (3). * * * [Same as parent volume.]

(4) To co-operate with any corporation, association, individual or group of individuals, including any agency of the federal, or state, or local government, in order to carry out effective programs.

(5) To receive gifts, grants, or donations for the purpose of advancing the program; to acquire by gift, deed, purchase or condemnation land necessary for refuse disposal purposes.

(6) To enforce all state or local board of health rules and regulations pertaining to the storage, collection, and disposal of refuse.

(7) To apply for and receive from the federal government or the state government on behalf of said refuse disposal district any moneys that may be appropriated by federal or state legislative bodies for aiding such programs.

(8) To borrow from any loaning agency any funds available for assistance in planning or financing a refuse disposal district and repay the same with the moneys received from the fees levied provided for in this act.

(9) The board shall have the power to implement their proposed program, a section at a time. In the event that a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971.

Amendments

The 1971 amendment substituted the preliminary paragraph for a paragraph reading "The board of directors for the refuse disposal district shall have power"; inserted "or local" before "government" in subdivision (4); added the clause relating to land acquisition at the end of subdivision (5); inserted "or the state government" in subdivision (7); substituted "federal or state legislative bodies" for "Congress" in subdivision (7); substituted "any loaning agency" in subdivision (8) for the "the federal government"; added subdivision (9); and made minor changes in phraseology and punctuation.

69-6012. Joint districts. Joint refuse disposal districts are districts which encompass two (2) or more counties or parts thereof. A joint refuse disposal district may be created in the following manner: The commissioners of each county affected will create the district following the procedure as prescribed under sections 69-6003, 69-6004, 69-6005, and 69-6006, R. C. M., 1947. The commissioners shall appoint a joint board of directors composed of at least five (5) members, each of whom shall be property owners in the said district. The board of directors for a joint district will consist of one (1) commissioner from each county involved, one (1) member from each of the incorporated cities or towns that are included in the district, and one (1) member from each of the county or city-county boards of health. The rest of the joint board of directors shall consist of interested citizens distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

History: En. Sec. 4, Ch. 136, L. 1971.

69-6013. Duty of county attorney—conflict of interest. The county attorney shall be the legal adviser of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board

may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by county attorney.

History: En. Sec. 5, Ch. 136, L. 1971; amd. Sec. 1, Ch. 179, L. 1973.

Amendments

The 1973 amendment added the second sentence.

Repealing Clause

Section 6 of Ch. 136, Laws 1971 read "Section 16-1031, R. C. M., 1947, is repealed."

CHAPTER 61—CONSENT BY MINORS TO MEDICAL CARE AND PSYCHIATRIC COUNSELING

Section
69-6106. Consent of minor to psychiatric or psychological counseling valid under urgent circumstances.
69-6107. Immunity of physician or psychologist.

69-6106. Consent of minor to psychiatric or psychological counseling valid under urgent circumstances. The consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances where the need for such counseling is urgent in the opinion of the physician or psychologist involved, because of danger to the life, safety or property of a minor or of other person or persons, and the consent of the spouse, parent, custodian or guardian of the said minor cannot be obtained within a reasonable time to offset the said danger to life or safety, when executed by the said minor shall be valid and binding as if the said minor had achieved his or her majority, that is, such minor shall be deemed to have and shall have the same legal capacity to act, and the same legal obligations with regard to the giving of such consent, as a person of full legal age and capacity, the infancy of said minor and any contrary provisions of law notwithstanding, and such consent shall not be subject to later disaffirmance by reason of such minority; and the consent of no other person or persons (including, but not limited to a spouse, parent, custodian or guardian) shall be necessary in order to authorize the psychiatric or psychological counseling to such minor, provided, however, that no parent shall be obligated for the cost of such counseling without his consent.

History: En. Sec. 1, Ch. 315, L. 1971.

Title of Act

An act providing that minors may give legal consent to obtain psychiatric or psychological counseling where need for such counseling is urgent; that such consent shall be binding on the minor and not subject to later disaffirmance by reason of such minority; that the consent of no other person shall be necessary in order to authorize care or services provided to such minor; providing that physicians or licensed psychologists who provide care or services under the terms of this act shall incur no civil or criminal liability, except that such immunity shall not apply to negligent acts or omissions.

69-6107. Immunity of physician or psychologist. In any case arising under the provisions of this act the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: En. Sec. 2, Ch. 315, L. 1971.

CHAPTER 62—ALCOHOL AND DRUG DEPENDENCE

69-6202. Commission on alcohol and drug dependence, etc.

Cross-References

Commission abolished and functions transferred, sec. 82A-602(3).

69-6205. Department to administer act.

Cross-References

Department abolished and functions transferred, sec. 82A-602 (1).

CHAPTER 64—VOLUNTARY STERILIZATION—STATE BOARD OF EUGENICS

Section
69-6402. State board of eugenics—composition.

69-6402. State board of eugenics—composition. To carry out the purposes of this act, there is hereby created and established for Montana a state board of eugenics which shall consist of the following:

(1) to (4). * * * [Same as parent volume.]

Board members shall receive twenty-five dollars ($25) per day for attending meetings. Board members shall also be reimbursed for actual and necsssary expenses incurred in attending meetings.

History: En. Sec. 2, Ch. 332, L. 1969; amd. Sec. 1, Ch. 74, L. 1971.

Amendments

The 1971 amendment added the final paragraph, providing for per diem and expenses.

Effective Date

Section 2 of Ch. 74, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

Cross-References

Board continued in department of institutions, sec. 82A-805.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

CHAPTER 65—MONTANA ENVIRONMENTAL POLICY ACT

Section
69-6501. Short title.
69-6502. Purpose of act.
69-6503. Declaration of state policy for the environment.
69-6504. General directions to state agencies.
69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies.
69-6506. Specific statutory obligations unimpaired.
69-6507. Policies and goals supplementary.
69-6508. Environmental quality council.
69-6509. Term of office.
69-6510. Meetings.
69-6511. Appointment and qualifications of an executive director.
69-6512. Appointment of employees.
69-6513. Term and removal of the executive director.
69-6514. Duties of executive director and staff.
69-6515. Examination of records of government agencies.
69-6516. Hearings by council—enforcement of subpoenas.
69-6517. Consultation with other groups—utilization of services.

69-6501. Short title. This act may be cited as the "Montana Environmental Policy Act."

History: En. Sec. 1, Ch. 238, L. 1971.

Title of Act

An act to establish a state policy for the environment and to establish an environmental quality council and setting forth its powers and duties and providing an effective date.

69-6502. Purpose of act. The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971.

69-6503. Declaration of state policy for the environment. The legislative assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in co-operation with the federal government and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(a) In order to carry out the policy set forth in this act, it is the continuing responsibility of the state of Montana to use all practicable means, consistent with other essential considerations of state policy, to improve and co-ordinate state plans, functions, programs, and resources to the end that the state may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Montanans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our unique heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The legislative assembly recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971.

69-6504. General directions to state agencies. The legislative assembly authorizes and directs that, to the fullest extent possible.

(a) The policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this act, and

(b) all agencies of the state shall

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) identify and develop methods and procedures, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(3) include in every recommendation or report on proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the environmental quality council and to the public, and shall accompany the proposal through the existing agency review processes.

(4) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national co-operation in anticipating and preventing a decline in the quality of mankind's world environment;

(6) make available to counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(7) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(8) assist the environmental quality council established by section 8 [69-6508] of this act.

History: En. Sec. 4, Ch. 238, L. 1971.

69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies. All agencies of the state shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this act and shall propose to the governor and the environmental quality council not later than July 1, 1972, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this act.

History: En. Sec. 5, Ch. 238, L. 1971.

69-6506. Specific statutory obligations unimpaired. Nothing in section 3 [69-6503] or 4 [69-6504] shall in any way affect the specific statutory obligations of any agency of the state

(a) to comply with criteria or standards of environmental quality,

(b) to co-ordinate or consult with any other state or federal agency, or

(c) to act, or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971.

69-6507. Policies and goals supplementary. The policies and goals set forth in this act are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971.

69-6508. Environmental quality council. The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a regular member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the sixtieth legislative day in

the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the council. No more than two (2) of the appointees of each house shall be members of the same political party.

(c) Four (4) members of the general public to be appointed by the governor with the consent of the senate.

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 8, Ch. 238, L. 1971.

69-6509. Term of office. The four (4) council members from the house of representatives shall serve for two (2) years and may be reappointed. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for four (4) years, and these members may be reappointed for a two (2) year term. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for two (2) years and these members may be reappointed for a four (4) year term. In no case shall a member of the council serve more than six (6) years.

The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of two (2) years.

History: En. Sec. 9, Ch. 238, L. 1971.

69-6510. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council shall, unless he is a full-time salaried officer or employee of this state, be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of council duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members, but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971.

69-6511. Appointment and qualifications of an executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have

at least three (3) years of responsible experience in the field of environmental management.

He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971.

69-6512. Appointment of employees. The executive director, subject to the approval of the council may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971.

69-6513. Term and removal of the executive director. The executive director is solely responsible to the environmental quality council. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971.

69-6514. Duties of executive director and staff. It shall be the duty and function of the executive director and his staff

(a) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in section 3 [69-6503] of this act, and to compile and submit to the governor and the legislative assembly studies relating to such conditions and trends;

(b) to review and appraise the various programs and activities of the state agencies in the light of the policy set forth in section 3 [69-6503] of this act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the governor and the legislative assembly with respect thereto;

(c) to develop and recommend to the governor and the legislative assembly, state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(d) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(e) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data

and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(f) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislative assembly requests;

(g) to analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences, and assist in preparation of reports for use by legislative committees, administrative agencies, and the public.

(h) to consult with, and assist legislators who are preparing environmental legislation, to clarify any deficiencies or potential conflicts with an overall ecologic plan.

(i) to review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities, and with a general ecologic perspective, and to suggest legislation to remedy such situations.

(j) to transmit to the governor and the legislative assembly annually, and make available to the general public annually, beginning July 1, 1972, an environmental quality report concerning the state of the environment which shall contain

(1) the status and condition of the major natural, man-made, or altered environmental classes of the state, including, but not limited to, the air, the aquatic, including surface and ground water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment;

(2) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(3) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the state and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: En. Sec. 14, Ch. 238, L. 1971.

69-6515. Examination of records of government agencies. The environmental quality council shall have the authority to investigate, examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971.

69-6516. Hearings by council—enforcement of subpoenas. In the discharge of its duties the environmental quality council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the environmental quality council to compel obedience by proceedings for contempt as the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971.

69-6517. Consultation with other groups—utilization of services. In exercising its powers, functions, and duties under this act, the council shall

(a) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments and other groups, as it deems advisable; and

(b) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the commission's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971.

Effective Date

Section 18 of Ch. 238, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

CHAPTER 66—PASSENGER TRAMWAYS

Section
69-6601. Policy of state.
69-6602. Definitions.
69-6605. Registration of tramways required.
69-6606. Application for registration.
69-6607. Issuance of certificates.
69-6608. Fees.
69-6609. Deposit of fees.
69-6610. Additional powers and duties of board.
69-6611. Inspection of tramways.
69-6612. Order for corrective action and compliance.
69-6613. Remedies to enforce compliance.
69-6614. Judicial review.
69-6615. Tramways not common carrier or public utilities.
69-6616. Unlawful to endanger life or cause damage.
69-6617. Violation a misdemeanor.

69-6601. Policy of state. In order to safeguard the life, health, property and welfare of the citizens of Montana while using passenger tram-

ways, as defined in section 2 [69-6602] of this act, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design construction and operation of passenger tramways, but not from the hazards inherent in the sports of mountaineering, skiing and hiking, or from the hazards of the area served by the skier or other sportsman; and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules and regulations as set forth by the Montana state aerial tramway board. The state, through the passenger tramway safety board, shall register all passenger tramways in the state, establish reasonable standards of design, construction and operational practices and cause to be made such inspections as may be necessary in carrying this policy into effect.

History: En. Sec. 1, Ch. 436, L. 1971.

Title of Act

An act relating to the inspection of passenger tramways; providing for creation of a passenger tramway safety board, term of office, and compensation of board members, powers and duties of the board, passenger tramway registration, registration fees, and judicial review.

69-6602. Definitions. As used in this act:

(1) "Department" means the department of administration provided for in Title 82A, chapter 2.

(2) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(3) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages or directs the operation of a passenger tramway.

(4) "Area" means the area, terrain or ski slopes served by a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) Two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(b) Multi-car aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;

(c) Skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar devices;

(d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

(e) J bar, T bar or platter pull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by

means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) Rope tow, a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

History: En. Sec. 2, Ch. 436, L. 1971; amd. Sec. 53, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted the definition in subsection (1) for a subsection which read "The word 'board' means the passenger tramway safety board created by section 3"; and made minor changes in style and phraseology.

69-6603, 69-6604. Repealed.

Repeal

Sections 69-6603, 69-6604 (Secs. 3, 4, Ch. 436, L. 1971), relating to the tramway safety board, were repealed by Sec. 58, Ch. 511, Laws 1973.

69-6605. Registration of tramways required. No passenger tramway shall be operated in this state unless it has been and continues to be registered with the board; provided, however, that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the board; and if an operator files an application for the registration of a passenger tramway with the board which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the board takes final action on the pending application and shall have (a) issued a certificate to the operator, or (b) given written notice to the operator that the passenger tramway has not qualified for certification.

History: En. Sec. 5, Ch. 436, L. 1971.

69-6606. Application for registration. On or before October 1, 1971, and each year following on or before October 1, every operator of a passenger tramway shall apply to the board, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the board may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this act as specified in section 1 [69-6601] and the rules and regulations promulgated by the board pursuant to section 10 [69-6610].

History: En. Sec. 6, Ch. 436, L. 1971.

69-6607. Issuance of certificates. (1) The board shall issue to the applying operator registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) That the facts stated in the application are sufficient to enable the board to fulfill its duties under this article; and

(b) That each such passenger tramway sought to be registered complies with the rules and regulations of the board promulgated pursuant to section 10 [69-6610].

(2) In order to satisfy itself that the conditions described in paragraphs (a) and (b) of subsection (1) of this section have been fulfilled,

the board may cause to be made such inspections described in section 11 [69-6611] as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the board shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this chapter.

(4) Each registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

History: En. Sec. 7, Ch. 436, L. 1971.

69-6608. Fees. The application for registration, or supplemental application, shall be accompanied by such annual fees as the board may fix from year to year, not to exceed the following annual fees: passenger tramways described in section 2 (5) (e) and (f) [69-6602 (5) (e) and (f)], twenty-five dollars ($25) each; (c) and (d), fifty dollars ($50) each; (a) and (b), one hundred dollars ($100) each.

History: En. Sec. 8, Ch. 436, L. 1971.

69-6609. Deposit of fees. All fees collected by the board shall be deposited in an earmarked revenue fund—passenger tramway safety account.

History: En. Sec. 9, Ch. 436, L. 1971.

69-6610. Additional powers and duties of board. (1) In addition to all other powers and duties conferred and imposed upon the board by this article, the board shall have and exercise the following powers and duties:

(a) To adopt reasonable rules and regulations relating to public safety in the design, construction and operation of passenger tramways, but which shall not relate or pertain to an area served by a passenger tramway. In adopting such rules and regulations the board shall use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways." ANSI B 77.1—1970, as amended from time to time, or equivalent, and as amended or supplemented from time to time by the board, and shall not be discriminatory in their application to operators of passengers tramways, and shall hold hearings and take in all evidence relating to the adoption of these rules and regulations; and the board shall supply to each operator a copy of its rules and regulations and each amendment thereto or revision thereof.

(b) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any inquiry;

(c) To approve, deny, revoke, and renew the registrations provided for in this chapter;

(d) To cause the prosecution and enjoinder of all persons violating the provisions of this chapter and incur the necessary expenses thereof;

(e) To elect officers and adopt a seal which may be affixed to all registrations issued by the board;

(f) To employ, within the funds available, and prescribe the duties of a secretary and such other personnel as the board shall deem necessary.

History: En. Sec. 10, Ch. 436, L. 1971.

69-6611. Inspection of tramways. The board may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the board may reasonably require. The board may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the board's rules and regulations exists, or a condition in passenger tramway construction, operation or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the board for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971.

69-6612. Order for corrective action and compliance. If, after investigation, the board finds that a violation of this chapter or any of its rules or regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered mail at the board's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971.

69-6613. Remedies to enforce compliance. If any operator fails to comply with a legal order, rule or regulation of the board, the board, at its election, may

(a) Suspend the registration of the affected passenger tramway until the operator complies therewith; or

(b) Bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located, to compel compliance therewith. In such proceedings the board shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971.

69-6614. Judicial review. Any order of the board adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject

of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971.

69-6615. Tramways not common carrier or public utilities. Passenger tramways shall not be construed to be common carrier or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: En. Sec. 15, Ch. 436, L. 1971.

69-6616. Unlawful to endanger life or cause damage. It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

History: En. Sec. 16, Ch. 436, L. 1971.

69-6617. Violation a misdemeanor. Any person who violates section 16 [69-6616] shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 436, L. 1971.

CHAPTER 67—DIAGNOSTIC TESTS FOR PREGNANT WOMEN AND NEWBORN INFANTS

Section
69-6701. Definitions.
69-6702. Prenatal blood sample required for serological test.
69-6703. Approved laboratories to perform test—report of positive results.
69-6704. Certificate form.
69-6705. Exhibit of results of test to patient and spouse—minor patient's parent or guardian.
69-6706. Information confidential—violation as misdemeanor.
69-6707. Administrative expenses.
69-6708. Waiver of test by court when contrary to patient's religious creed.
69-6709. Birth certificate to state whether test made.
69-6710. Definitions.
69-6711. Metabolic test required for newborn infant—approved laboratory.
69-6712. Administration—rules.
69-6713. Boulder river school assistance required.

69-6701. Definitions. (1) "Department" means department of health and environmental sciences.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: En. Sec. 1, Ch. 228, L. 1973.

Title of Act

An act providing for a standard serological test for women seeking prenatal care; providing for definitions; laboratory testing, certificate form, duties of physicians and other persons required to take sample; disclosure of report, confidentiality of report, report to department of health of positive reports of test, use of information by department, when, report of birth to state if test made; exemption from provisions of act; and repealing sections 69-4612, 69-4613, 69-4614 and 69-4615, R. C. M. 1947.

69-6702. Prenatal blood sample required for serological test. Every female, regardless of age or marital status, seeking prenatal care from a

physician, is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(1) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(2) A person permitted to attend a pregnant woman, but not permitted to take blood samples shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(3) Any physician or other person required to take the blood sample who violates this act is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision, and whose request is refused, is not guilty of a violation of this section.

History: En. Sec. 2, Ch. 228, L. 1973.

69-6703. Approved laboratories to perform test—report of positive results. The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States public health service or United States armed forces laboratory shall be approved for the purpose of this act. The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department.

(1) Reasonable rules for reports to be submitted by any laboratory making tests, and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(2) All positive laboratory tests for any venereal diseases shall be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

(3) The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

History: En. Sec. 3, Ch. 228, L. 1973.

69-6704. Certificate form. The "certificate form" to be provided the physician recording the results of the test made by the laboratory shall be the same form as that provided with respect to premarital standard serological test in section 48-135.

History: En. Sec. 4, Ch. 228, L. 1973.

69-6705. Exhibit of results of test to patient and spouse—minor patient's parent or guardian. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or, if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: En. Sec. 5, Ch. 228, L. 1973.

69-6706. Information confidential—violation as misdemeanor. Certificates, laboratory statements or reports, or any other matters in this act referred to, and the information therein contained, shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information, or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports, without authority, to any person not by law entitled to them, is guilty of a misdemeanor and may be fined not more than one hundred dollars ($100).

History: En. Sec. 6, Ch. 228, L. 1973.

69-6707. Administrative expenses. The department shall provide all necessary printing and pay all necessary expenses relative to administration of the act.

History: En. Sec. 7, Ch. 228, L. 1973.

69-6708. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this act resides may waive the requirements of this act as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the act are contrary to the tenets or practices of the religious creed of which the applicant is an adherent, and that the public health and welfare will not be injuriously affected thereby.

History: En. Sec. 8, Ch. 228, L. 1973.

69-6709. Birth certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: En. Sec. 9, Ch. 228, L. 1973.

Separability Clause

Section 10 of Ch. 228, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 11 of Ch. 228, Laws 1973 read "Sections 69-4612, 69-4613, 69-4614 and 69-4615, R. C. M. 1947, are repealed."

69-6710. Definitions. As used in this act:

(1) "Department" means the department of health and environmental sciences.

(2) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(3) "Newborn" means any infant under twenty-eight (28) days of life.

History: En. Sec. 1, Ch. 227, L. 1973.

Title of Act

An act providing for infant screening; providing the department of health and

environmental sciences require tests for newborn infants; providing for administration of the act; regulations; requiring the availability of, and if requested, furnishing of assistance and services of the department of health and environmental sciences and the Boulder river school and hospital if tests are reported positive; and repealing section 69-4116, R. C. M. 1947.

69-6711. Metabolic test required for newborn infant—approved laboratory. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for, or a person responsible for the registration of birth of an infant, shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: En. Sec. 2, Ch. 227, L. 1973.

69-6712. Administration—rules. This act shall be administered by the department, and the department may adopt rules for the administration of this act.

History: En. Sec. 3, Ch. 227, L. 1973.

69-6713. Boulder river school assistance required. (1) The department and the staff of the Boulder river school and hospital shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this act.

(2) The department may determine its procedure for advising the attending physician, the parents or legal guardian of the newborn infant of any medical results of the test, and the availability of assistance, services or counseling of the department and the staff of the Boulder river school and hospital. The department may determine procedures for coordination with the Boulder river school and hospital in providing the services and assistance required in this act.

History: En. Sec. 4, Ch. 227, L. 1973.

Separability Clause

Section 5 of Ch. 227, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 6 of Ch. 227, Laws 1973 read "Section 69-4116, R. C. M. 1947, is repealed."

CHAPTER 68—MOTOR VEHICLE WRECKING FACILITIES

Section

69-6801. Definitions.
69-6802. Motor vehicle wrecking facility license—application—fee—display—term—not transferable.
69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility.
69-6804. Records required of facilities.
69-6805. County to provide motor vehicle graveyards—consolidation—budget.
69-6806. Crushing and recycling of junk vehicles.
69-6807. Deposit of fees—special junk vehicle assessment fee.
69-6808. Enforcement—adoption of rules.
69-6809. Denial, suspension or revocation of license—grounds.
69-6810. Injunction to enforce act—violation as misdemeanor.

69-6801. Definitions. Unless the context requires otherwise, in this act:

(1) "Motor vehicle wrecking facility" means a facility buying, selling, or dealing in four (4) or more vehicles per year of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle, or which buys or sells integral second-hand parts or component material thereof, in whole or in part, and deals in second-hand motor vehicle parts. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(2) "Motor vehicle graveyard" means a collection point for junk motor vehicles prior to their disposal.

(3) "Junk vehicle" means either a discarded, ruined, wrecked, or dismantled vehicle, or vehicle substantially changed in form by removal of parts or component materials, and in either case that remains in public view which is not lawfully and validly licensed and remains inoperative or incapable of being driven excluding antique vintage and classic vehicles.

(4) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(5) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

History: En. Sec. 1, Ch. 410, L. 1973.

Title of Act

An act providing for the licensing and regulation of motor vehicle wrecking facilities; controlling junk vehicles in non-wrecking yard locations; the establishment of motor vehicle graveyard facilities, and related matters thereto; amending sections 32-4515 and 32-4516, R. C. M. 1947, to permit the licensing of junkyards by the department of health and environmental sciences; and the establishment of an effective date.

69-6802. Motor vehicle wrecking facility license—application—fee—display—term—not transferable. A person may not conduct, maintain, or operate a motor vehicle wrecking facility without a license issued by the department.

(1) Application for the license shall be made on forms furnished by the department.

(2) An annual fee of fifty dollars ($50) shall be paid to the department for the license, or quarterly prorated for new facilities.

(3) A license shall be displayed in a prominent place in the licensed facility.

(4) The license expires on December 31 of the year issued.

(5) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973.

69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. (1) Possession at a single location, of four

(4) or more junk vehicles of a type required to be licensed, is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

(2) A person who owns or possesses at a single location four (4) or more junk vehicles of a type required to be licensed is subject to this act even though he is not operating a motor vehicle wrecking facility.

History: En. Sec. 3, Ch. 410, L. 1973.

69-6804. Records required of facilities. (1) Every motor vehicle wrecking facility shall maintain books or files in which is kept a record and description of every junk vehicle obtained by it, together with the name of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of title or sheriff's certificate of sale, or a written release from the former owner;

(b) the name of the state where the vehicle was last registered;

(c) the number of the last license plate;

(d) the make of the vehicle;

(e) the motor or identification number or serial number;

(f) the date purchased;

(g) the disposition of motor and chassis.

(3) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of two dollars ($2) for each vehicle submitted and it shall surrender to the department all records maintained as required in subsections (1) and (2) of this section, and the vehicle is then the property of the state.

History: En. Sec. 4, Ch. 410, L. 1973.

69-6805. County to provide motor vehicle graveyards—consolidation—budget. (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards.

(c) Two (2) or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this act pertaining to a county also apply to a district formed under this subsection.

(d) When there is an accumulation of at least two hundred (200) junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(2) (a) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(b) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(c) Any proposed change in the budget or plan must be approved by the department.

(d) The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard.

History: En. Sec. 5, Ch. 410, L. 1973.

69-6806. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least two hundred (200) vehicles at the facility.

(3) All moneys received from the sale of the junk vehicles or from recycling of the material shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(4) Any individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle, or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973.

69-6807. Deposit of fees—special junk vehicle assessment fee. (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(2) There is assessed a special junk vehicle disposal fee commencing on July 1, 1973, on each new application for a motor vehicle title and on each transfer of motor vehicle title in the amount of four dollars ($4), on passenger cars and trucks under 8001 pounds GVW, which shall be collected by the county treasurer, and commencing with the year 1974, there shall be assessed an additional special junk vehicle disposal fee in the amount of one dollar ($1) on each passenger car and truck under 8001 pounds GVW registered for licensing. The one dollar ($1) fee shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in section 53-122, while owned by a dealer;

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this act and the cost of administration of the act to date so that any necessary adjustment of the amount of the fee may be made

to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved budget of the county. However, the yearly payment may not exceed one dollar ($1) for each motor vehicle that is licensed in that county.

History: En. Sec. 7, Ch. 410, L. 1973.

69-6808. Enforcement—adoption of rules. The department shall adopt rules necessary to administer and enforce this act, including, but not limited to, rules pertaining to:

(1) the control, operation, and licensing of motor vehicle wrecking yards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking yards;

(3) the inspection and evaluation of premises and records subject to or required by this act;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this act.

History: En. Sec. 8, Ch. 410, L. 1973.

69-6809. Denial, suspension or revocation of license—grounds. The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been re-assembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this act or with a rule of the department;

(5) obtained a license fraudulently.

History: En. Sec. 9, Ch. 410, L. 1973.

69-6810. Injunction to enforce act—violation as misdemeanor. (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of an unlicensed motor vehicle wrecking facility either permanently or until compliance with this act and the rules of the department has been demonstrated to the satisfaction of the department.

(2) Violation of this act or a rule of the department adopted under this act is a misdemeanor.

History: En. Sec. 10, Ch. 410, L. 1973.

Separability Clause

Section 11 of Ch. 410, Laws 1973 read "If any section, subsection, sentence, clause, or provision of the act is held invalid, the remainder of the act is not affected."

REVISED CODES OF MONTANA

VOLUME 4
Part 2
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF SECOND REPLACEMENT VOLUME 4 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT VOLUME 4 (PART 2) THROUGH VOLUME 504 PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

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THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

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The Allen Smith Company
Indianapolis, Indiana

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MONTANA REVISED CODES

TITLE 70—PUBLIC UTILITIES

Chapter
2. Montana state board of food distributors ex officio Montana trade commission—Regulation of public mills, Repealed—Section 2, Chapter 256, Laws of 1973.
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CHAPTER 1—PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

70-101. (3879) **Creation of public service commission.**

Powers of Commission

Regulation of Montana public service commission limiting the liability of a telephone company arising from errors in or omissions of directory listings to the amount of charges for such of the subscriber's service as is affected during the period covered by the directory in which the error or omission occurs, is reasonable and binding on the subscriber. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, — M —, 503 P 2d 526.

70-102. (3880) **Railroad commissioners as ex officio commission.**

Judicial Interference

District court's writ of prohibition was vacated where it barred board of railroad commissioners, ex officio the public service commission, from performing its duties concerning water company's application to increase rates and charges. State ex rel. Board of Railroad Commrs. v. District Court, — M —, 488 P 2d 903.

70-119. (3897) **Complaints against public utility—hearing.**

Jurisdiction

This section gives agency jurisdiction to hold hearings concerning rate increases for utilities even though no increase could be made at the time because of federal wage and price freeze. State ex rel. Department of Public Service Regulation v. District Court, — M —, 488 P 2d 1147.

CHAPTER 2—MONTANA STATE BOARD OF FOOD DISTRIBUTORS EX OFFICIO MONTANA TRADE COMMISSION—REGULATION OF PUBLIC MILLS
(Repealed—Section 2, Chapter 256, Laws of 1973)

70-201 to 70-233. (3914 to 3946) **Repealed.**

Repeal

Sections 70-201 to 70-233 (Sec. 2, p. 72, L. 1879; Secs. 3271, 3272, Pol. C. 1895; Secs. 1 to 31, Ch. 223, L. 1919; Sec. 1, Ch. 123, L. 1943), relating to the Montana trade commission and the regulation of public mills, were repealed by Sec. 2, Ch. 256, Laws 1973.

CHAPTER 7—CONSUMER COUNSEL

Section
70-701. Title and purpose of act.
70-702. Definitions.
70-703. Legislative consumer committee created—composition—terms—officers.
70-704. Quarterly meetings of committee—expenses of members reimbursed.

70-705. Appointment of consumer counsel—qualifications.
70-706. Staff of counsel.
70-707. Powers and duties of consumer counsel—annual report.
70-708. Subpoena to witness to appear before counsel.
70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation.

70-701. Title and purpose of act. This act shall be known and may be cited as "The Consumer Counsel Act."

History: En. Sec. 1, Ch. 65, L. 1973.

Title of Act

An act to create the office of consumer counsel to comply with article XIII, section 2 of the 1972 Montana constitution.

70-702. Definitions. As used in this act:

(1) "Committee" means the legislative consumer committee.

(2) "Commission" means the public service commission created in section 70-101, R.C.M. 1947.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: En. Sec. 2, Ch. 65, L. 1973.

70-703. Legislative consumer committee created—composition—terms—officers. (1) There is a legislative consumer committee consisting of two (2) members of the senate and two (2) members of the house of representatives.

(2) Members of the first committee shall be appointed within fifteen (15) days after the passage and approval of this act, in the same manner as standing committees of the respective houses are appointed. Subsequent members shall be appointed in the same manner before the sixtieth legislative day of the legislative session following the expiration of the terms of the members of the committee.

(3) Any person who is an employee, agent, officer, partner, or director of any regulated company, or who has served a regulated company in any capacity within the three (3) years previous to his appointment may not be a member of the committee.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee.

(5) No more than one (1) of the appointees of each house may be members of the same political party.

(6) A member shall serve until his term of office as a legislator ends and until his successor is appointed.

(7) The committee shall elect one (1) of its members as chairman and such other officers as it determines necessary.

History: En. Sec. 3, Ch. 65, L. 1973.

Compiler's Notes

The approval date of Ch. 65, Laws 1973 was February 25, 1973.

70-704. Quarterly meetings of committee—expenses of members reimbursed. The committee shall meet once each quarter to advise and consult with the consumer counsel. Committee members shall be reimbursed from the appropriation to the office of the consumer counsel for their actual and necessary expenses incurred and an additional sum equal to a legislator's pay while attending such quarterly meetings.

History: En. Sec. 4, Ch. 65, L. 1973.

70-705. Appointment of consumer counsel—qualifications. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

History: En. Sec. 5, Ch. 65, L. 1973.

70-706. Staff of counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this act, within the limits of legislative appropriation.

History: En. Sec. 6, Ch. 65, L. 1973.

70-707. Powers and duties of consumer counsel—annual report. The consumer counsel:

(1) shall appear at all public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein which may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225];

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

(5) may institute appropriate action in the state and federal courts in the name of the consuming public of the state of Montana for review of decisions rendered by the commission;

(6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee;

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 65, L. 1973.

70-708. Subpoena to witness to appear before counsel. If any person is requested to appear with or without his records as a witness before the commission or to be examined under the provisions of this act, the consumer counsel or his delegate may apply to the clerk of court of the first judicial district of Montana or any judicial district for a subpoena commanding the appearance of the witness and his records if requested. It is the duty of the clerk to issue the subpoena and the duty of any peace officer to serve the same. Disobedience of a subpoena issued under the provisions of this act is contempt of court and shall be punished accordingly.

History: En. Sec. 8, Ch. 65, L. 1973.

70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation. (1) There is an account in the earmarked revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, and shall at that time pay to the department of revenue a fee based on a fraction of the gross operating revenue reported, as determined by the department of revenue under subsection (3) of this section.

(3) Within thirty (30) days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies, for the previous fiscal year,

(b) compute the percentage of the amount determined in subsection (3)(a) which will produce an amount equal to the appropriation to the consumer counsel for each year of the appropriation, and

(c) give notice by mail to each regulated company of the percentage determined in subsection (3)(a) to be applied to the gross operating revenue reported under subsection (2) above, to determine the amount of the fee to be paid in each year of the appropriation.

(4) In the event the fee charged in any one (1) year of the biennium is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required for the first year of the next biennial appropriation before the determination for that year required by subsection (3)(a) of this act is made.

(5) Any regulated company, or any officer or employee of any regulated company, who, with intent to evade any fee or any requirement of this act or any lawful requirement of the commission thereunder, fails to pay the fee, or to make, render, sign or verify any statement, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(6) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: En. Sec. 9, Ch. 65, L. 1973.

Separability Clause

Section 10 of Ch. 65, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 8—UTILITY SITES

Section
70-801. Short title.
70-802. Policy and legislative findings.
70-803. Definitions.
70-804. Certificate from board required prior to construction of utility facility.
70-805. Surcharge on electric energy producer's license tax—administrative expenses—tax on gasification, liquefaction, uranium enrichment facilities.
70-806. Application for certification—filing and contents—fees—use of filing fees—proof of service on municipalities—waiver of time requirement.
70-807. Study, evaluation and report on proposed facility—application for amendment of certificate—hearings.
70-808. Parties to certification proceeding—waiver by failure to participate.
70-809. Record of hearing—procedure—rules of evidence.
70-810. Decision of board—findings necessary for certificate—conditions imposed—service of decision on parties.
70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required.
70-812. Review of denial of certificate by board—procedure.
70-813. Jurisdiction of courts restricted.
70-814. Annual long-range plan submitted—contents—available to public.
70-815. Study of planned facilities included in annual long-range report.
70-816. Environmental factors considered in evaluating long-range plans.
70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions.

70-818. Revocation or suspension of certificate.
70-819. Enforcement of act by residents of state—statement of failure to enforce act—mandamus—private suits for damages.
70-820. Adoption of rules—monitoring of facilities.
70-821. Penalties for violation of act—civil action by attorney general.
70-822. Grants, gifts and funds.
70-823. Act supersedes other laws or regulations.

70-801. Short title. This act may be cited as the Montana Utility Siting Act of 1973.

History: En. Sec. 1, Ch. 327, L. 1973.

Title of Act

An act to vest in the department and board of natural resources and conservation the authority to require and review long-range planning by certain utilities, to give approval to energy generation and conversion plant sites and associated facilities, to require preconstruction certification of such facilities; providing penalties for violation of this act; and providing an effective date.

70-802. Policy and legislative findings. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

History: En. Sec. 2, Ch. 327, L. 1973.

70-803. Definitions. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy-generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a)(ii) and (a)(iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would affect the environment

of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility.

History: En. Sec. 3, Ch. 327, L. 1973.

70-804. Certificate from board required prior to construction of utility facility. (1) No person shall commence to construct a utility facility in the state without first having obtained a certificate issued with respect to such facility by the board. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this act.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction.

History: En. Sec. 4, Ch. 327, L. 1973.

70-805. Surcharge on electric energy producer's license tax—administrative expenses—tax on gasification, liquefaction, uranium enrichment facilities. Every "producer" as defined in chapter 16 of Title 84, the electrical energy producers' license tax, shall, in addition to the sum required to be paid by that act, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as shown on the statement which is required by that act, in the same manner and within the time provided by that act. The director of revenue shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section of this act.

The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this act. The legislature shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section.

History: En. Sec. 5, Ch. 327, L. 1973.

70-806. Application for certification—filing and contents—fees—use of filing fees—proof of service on municipalities—waiver of time requirement. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 3(3)(a) [70-803 (3)(a)], 3(3)(b)(iv) [70-803(3) (b)(iv)], and 3(c) [70-803 (c)] and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 3(3)(b)(iii) [70-803 (3)(b)(iii)], an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three per cent (3%) of any estimated cost up to one million dollars ($1,000,000); plus one per cent (1%) of any estimated cost over a million dollars and up to twenty million dollars ($20,000,000); plus one-half of one per cent (0.5%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one per cent (0.25%) of any amount of estimated cost over one hundred million ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-tenth of one per cent (0.1%) of any amount of estimated cost over three hundred million dollars ($300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

History: En. Sec. 6, Ch. 327, L. 1973.

70-807. Study, evaluation and report on proposed facility—application for amendment of certificate—hearings. (1) Upon receipt of an application complying with section 6 [70-806], the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 16 [70-816] of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 3(3)(a) [70-803 (3)(a)], 3(3)(b)(iv) [70-803 (b)(iv)] and 3(c) [70-803 (c)] and within one hundred eighty (180) days for a facility as defined in sections 3(3)(b)(iii) [70-803 (b)(iii)] the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 16 [70-816] of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an ap-

plication for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

History: En. Sec. 7, Ch. 327, L. 1973.

70-808. Parties to certification proceeding—waiver by failure to participate. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 [70-806 (3)] of this act; and

(c) any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 [70-806 (4)] of this act; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

History: En. Sec. 8, Ch. 327, L. 1973.

70-809. Record of hearing—procedure—rules of evidence. Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act [82-4201 to 82-4225] shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

History: En. Sec. 9, Ch. 327, L. 1973.

70-810. Decision of board—findings necessary for certificate—conditions imposed—service of decision on parties. (1) The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in section 16 [70-816] of this act;

(e) in the case of an electric, gas or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice of the modification.

(3) A copy of the decision and any opinion issued with the decision shall be served upon each party.

History: En. Sec. 10, Ch. 327, L. 1973.

70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (1) of section 10 [70-810 (1)(f)] of this act, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facilities being certified. The statement shall include, but not be limited to, analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facilities; and

(v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this act and the conditions of the certificate.

(3) The time requirement of section 6 [70-806] and any of the provisions described in sections 7 through 11 [70-807 to 70-811] of this act may be waived by the board, for good cause shown with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

History: En. Sec. 11, Ch. 327, L. 1973.

70-812. Review of denial of certificate by board—procedure. (1) Any party as defined in section 8 [70-808] of this act aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review by the filing of a petition in a state district court of competent jurisdiction within thirty (30) days after the issuance of such final decision. Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 12, Ch. 327, L. 1973.

70-813. Jurisdiction of courts restricted. Except as expressly set forth in sections 12, 17 and 21 [70-812, 70-817 and 70-821] of this act, no court of this state shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act or to stop or delay the construction, operation or maintenance of a utility facility except to enforce compliance with this act or the provisions of a certificate issued hereunder pursuant to sections 19 or 21 [70-819 or 70-821] of this act.

History: En. Sec. 13, Ch. 327, L. 1973.

70-814. Annual long-range plan submitted—contents—available to public. (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to co-ordinate the plan with other utilities so as to provide a co-ordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor.

History: En. Sec. 14, Ch. 327, L. 1973.

70-815. Study of planned facilities included in annual long-range report. If a utility lists and identifies a proposed utility facility in its plan, submitted pursuant to section 14 [70-814] of this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values in section 16 [70-816] of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 [70-806] of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973.

70-816. Environmental factors considered in evaluating long-range plans. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates of site and facility, the board and department shall give consideration to the following list of environmental factors and may, by regulation, add to the categories of this section:

(1) Energy needs.

(a) Growth in demand and projections of need.

(b) Availability and desirability of alternative sources of energy.

(c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.

(d) Promotional activities of the utility which may have given rise to the need for this facility.

(e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.

(f) Conservation activities which could reduce the need for more energy.

(g) Research activities of the utility of new technology available to it which might minimize environmental impact.

(2) Land-use impacts.

(a) Area of land required and ultimate use.

(b) Consistency with area-wide state and regional land-use plans.

(c) Consistency with existing and projected nearby land use.

(d) Alternative uses of the site.

(e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.

(f) Geologic suitability of the site or route.

(g) Seismologic characteristics.

(h) Construction practices.

(i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.

(j) Corridor design and construction precautions for transmission lines or aqueducts.

(k) Scenic impacts.

(l) Effects on natural systems, wildlife, plant life.

(m) Impacts on important historic architectural, archeological, and cultural areas and features.

(n) Extent of recreation opportunities and related compatible uses.

(o) Public recreation plan for the project.

(p) Public facilities and accommodation.

(q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.

(3) Water resources impacts.

(a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.

(b) Hydrologic studies of impact of facilities on ground water.

(c) Cooling system evaluation including consideration of alternatives.

(d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.

(e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.

(f) Relationship to water quality standards.

(g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.

(h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.

(i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.

(j) Monitoring programs.

(4) Air quality impacts.

(a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.

(b) Topography. Factors affecting dispersion.

(c) Standards in effect and projected for emissions, design capability to meet standards.

(d) Emissions and controls.

(i) Stack design.

(ii) Particulates.

(iii) Sulfur Oxides.

(iv) Oxides of Nitrogen.

(v) Heavy metals, trace elements, radioactive materials and other toxic substances.

(e) Relationship to present and projected air quality of the area.

(f) Monitoring program.

(5) Solid wastes impact.

(a) Solid waste inventory.

(b) Disposal program.

(c) Relationship of disposal practices to environmental quality criteria.

(d) Capacity of disposal sites to accept projected waste loadings.

(6) Radiation impacts.

(a) Land-use controls over development and population.

(b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.

(c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.

(d) Monitoring. Adequacy of devices and sampling techniques.

(7) Noise impacts.

(a) Construction period levels.

(b) Operational levels.

(c) Relationship of present and projected noise levels to existing and potential stricter noise standards.

(d) Monitoring. Adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973.

70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions. Notwithstanding any other provision of law, no state or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate issued pursuant to the provisions of this act; except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

History: En. Sec. 17, Ch. 327, L. 1973.

70-818. Revocation or suspension of certificate. A certificate may be revoked or suspended:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of the provisions of this act, the regulations issued thereunder, or orders of the board or department.

History: En. Sec. 18, Ch. 327, L. 1973.

70-819. Enforcement of act by residents of state—statement of failure to enforce act—mandamus—private suits for damages. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement

or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act or a rule adopted under this act is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.

History: En. Sec. 19, Ch. 327, L. 1973.

70-820. Adoption of rules—monitoring of facilities. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

History: En. Sec. 20, Ch. 327, L. 1973.

70-821. Penalties for violation of act—civil action by attorney general. (1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4 [70-804], commences to construct or operate a utility facility after the effective date of this act; or

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars ($10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars ($10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) All fines collected shall be deposited in the state general fund.

History: En. Sec. 21, Ch. 327, L. 1973.

Compiler's Notes

Chapter 327, Laws 1973 became effective March 16, 1973.

70-822. Grants, gifts and funds. The department shall have authority to receive grants, gifts and other funds from any public or private source, to assist in its activities under this act.

History: En. Sec. 22, Ch. 327, L. 1973.

70-823. Act supersedes other laws or regulations. This act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

History: En. Sec. 23, Ch. 327, L. 1973.

Separability Clause

Section 24 of Ch. 327, Laws 1973 read "If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected."

Effective Date

Section 25 of Ch. 327, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

TITLE 71—PUBLIC WELFARE AND RELIEF

Chapter

2. Public Welfare Act part 1—to establish a state department of public welfare and county departments of public welfare, 71-233.1 to 71-233.5, 71-235, 71-236, 71-246.1, 71-247.
3. Public Welfare Act part 2—general relief—to provide aid to the unemployable, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-302.1.
10. Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008.
15. Medical assistance, 71-1516, 71-1517.
18. Program for adoption of hard-to-place children, 71-1801 to 71-1805.
19. Protective services for developmentally disabled, 71-1901 to 71-1913.
20. Community homes for developmentally disabled, 71-2001 to 71-2007.

CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section

71-233.1. Investigations by department of revenue—enforcement actions.
71-233.2. Co-operation of governmental agencies with department of revenue.
71-233.3. Information made available to department of revenue.
71-233.4. Nondisclosure of information resulting from investigation—violation of disclosure provisions by employees.
71-233.5. Definitions.
71-235. Living relatives—jointly and severally liable—scale of contribution.
71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return.
71-246.1. Liens released.
71-247. Recovery from the estate of a decedent—claim for assistance paid.

71-233.1. Investigations by department of revenue—enforcement actions. When requested by the department of social and rehabilitation services, the department of revenue shall have the power and duty to:

(a) investigate matters relating to public welfare assistance and vendor payments including but not limited to the claim for an acceptance of welfare benefits by welfare recipients, and the receipt and disbursal of welfare funds by state, county or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the welfare laws and violations thereof.

History: En. Sec. 1, Ch. 295, L. 1973.

Title of Act

An act authorizing the department of revenue to investigate matters relating to public welfare payments; to institute civil and criminal actions for enforcement of the welfare laws and to require the co-operation of other agencies to effectuate the purposes of this act.

71-233.2. Co-operation of governmental agencies with department of revenue. All state departments and agencies and county or other governmental agencies shall co-operate with the department of revenue and its employees to effectuate the purpose of this act.

History: En. Sec. 2, Ch. 295, L. 1973.

71-233.3. Information made available to department of revenue. (1) The department of social and rehabilitation services and its local units shall

make available to the department of revenue information contained in the welfare files pertinent to the investigations and judicial actions described in section 1 [71-233.1].

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue, all records, files, memoranda, forms or other papers relating to public welfare matters including income tax returns filed with the department of revenue.

History: En. Sec. 3, Ch. 295, L. 1973.

71-233.4. Nondisclosure of information resulting from investigation—violation of disclosure provisions by employees. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation shall be disclosed except in accordance with the laws applicable to the source of information; provided, however, such information may be used or disclosed as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information.

History: En. Sec. 4, Ch. 295, L. 1973.

71-233.5. Definitions. As used in this act, "public welfare" and "welfare" mean any kind of financial or social assistance administered by or under the supervision of the department of social and rehabilitation services.

History: En. Sec. 5, Ch. 295, L. 1973.

71-235. Living relatives—jointly and severally liable—scale of contribution. The living relatives of each needy person, named in this act, shall be and they hereby are made jointly and severally liable in the order named in section 71-233 to such needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of persons dependent upon income exclusive of applicant									
	1	2	3	4	5	6	7	8	9	10 and over
	C. Maximum required monthly contribution									
Under 304	0	0	0	0	0	0	0	0	0	0
305 to 399	22	0	0	0	0	0	0	0	0	0
400 to 489	43	14	0	0	0	0	0	0	0	0
490 to 619	72	43	29	22	7	0	0	0	0	0
620 to 739	101	72	58	50	36	29	14	0	0	0
740 to 869	130	101	86	79	65	58	43	29	14	0
870 to 1024	144	130	115	108	94	86	72	58	43	29
1025 to 1179	144	144	144	144	130	123	108	94	79	65
1180 to 1339	144	144	144	144	144	144	144	130	115	101
1340 and up	144	144	144	144	144	144	144	144	144	130

For the purposes of this act: (1) A needy person is one who is eligible for public assistance under the laws of this state; (2) "Net monthly income" shall be deemed to mean one-twelfth (1/12) of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, subsection ten (10), and the state income tax paid as determined by the state income tax return filed during the current year.

In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each of said spouses during that time shall be considered to be one-half (1/2) of the amount shown in the scale established by this act.

History: En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973.

Amendments

The 1973 amendment rewrote the contributions table, generally reducing the contributions required from low-income and large families and increasing the contributions required from high-income and small families.

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return. The state department of public welfare shall be required and it shall be its duty, when necessary to determine the financial circumstances of those relatives herein named, to secure from the state department of revenue a report of the amount of income set forth on the return required by section 84-4914. The state department of revenue is authorized and it shall be its duty to divulge or make known to the state department of public welfare the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

A separate income tax return shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of the individual making it; a joint income tax return of husband and wife shall constitute prima facie evidence of taxable income, amount of tax and number of dependents of either spouse, for the purposes of this act.

It shall be unlawful for the department or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner any information secured from the state department of revenue in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

History: En. Sec. 4, Ch. 180, L. 1953; amd. Sec. 49, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" and "department" for "board" throughout the section.

71-241. Repealed.

Repeal

Section 71-241 (Sec. 1, Ch. 228, L. 1953; Sec. 15, Ch. 212, L. 1965; Sec. 1, Ch. 60, L. 1967), relating to liens on real property of recipients of public assistance, was repealed by Sec. 3, Ch. 299, Laws 1973.

71-243 to 71-246. Repealed.

Repeal

Sections 71-243 to 71-246 (Secs. 3 to 6, Ch. 228, L. 1953), relating to liens on real property of recipients of public assistance, were repealed by Sec. 3, Ch. 299, Laws 1973.

71-246.1. Liens released. All liens held by the department of social and rehabilitation services under authority granted by sections 71-241 through 71-250, R.C.M. 1947, are unenforceable and shall be released.

History: En. Sec. 1, Ch. 299, L. 1973.

Title of Act

An act to render unenforceable all liens held by the state department of social and rehabilitation services permitted under sections 71-241 through 71-250, R. C. M. 1947; and to repeal sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248 and 71-249, R. C. M. 1947, relating to the lien of the state department of social and rehabilitation services upon all real property of an applicant for public assistance and the enforcement of the lien and amending section 71-247, R. C. M. 1947.

71-247. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953.

The state board of public welfare shall not assert its claim during the lifetime and continued occupancy of any real estate of a deceased recipient's estate by the surviving spouse or dependent as a home or residence unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the board shall file its claim hereunder.

History: En. Sec. 7, Ch. 228, L. 1953; amd. Sec. 2, Ch. 299, L. 1973.

Amendments

The 1973 amendment deleted from the end of the first paragraph the words "which is secured by the lien herein provided for" and a second sentence making the state's claim a preferred claim; deleted a second paragraph prohibiting enforcement of a claim against real estate occupied by a surviving spouse or dependent but continuing a lien on the real estate; deleted "lien or" before "claim" near the beginning of the present second paragraph; substituted "any real estate of a deceased recipient's estate" in the present second paragraph for "said real estate"; and inserted "as a home or residence" in the present second paragraph.

Repealing Clause

Section 3 of Ch. 299, Laws 1973 read "Sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248, 71-249, R. C. M. 1947, are repealed."

71-248, 71-249. Repealed.

Repeal

Sections 71-248, 71-249 (Secs. 8, 9, Ch. 228, L. 1953), relating to property of recipients of public assistance, were repealed by Sec. 3, Ch. 299, Laws 1973.

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section
71-302.1. Eligibility requirements for general relief.

71-301. Administration.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

71-302. Repealed.

Repeal

Section 71-302 (Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; Sec. 11, Ch. 129, L. 1939; Sec. 4, Ch. 117, L. 1941; Sec. 1, Ch. 156, L. 1951; Sec. 1, Ch. 99, L. 1963), relating to eligibility requirements for general relief, was repealed by Sec. 2, Ch. 152, Laws 1973. For new law, see sec. 71-302.1.

71-302.1. Eligibility requirements for general relief. (1) There are no residency requirements for an applicant to be eligible for general relief in Montana.

(2) Any person otherwise qualified who has not maintained legal residence in a single county for one (1) year or more shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he has resided for one (1) year in said county. If a recipient moves from one county to another county, he shall for the purpose of this act be deemed to retain residence in the original county until he has resided in the second county for a period of one (1) year at which time he will be deemed to have gained residence in the second county.

(3) If a person is absent from the state voluntarily, he shall thereby be ineligible for general relief in the state of Montana.

(4) Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be considered in determining the matter of county residence.

History: En. Sec. 1, Ch. 152, L. 1973.

Title of Act

An act to provide a definition of residency to determine county or state responsibility for financial support of general relief recipients; and to repeal section 71-302, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 152, Laws 1973 read "Section 71-302, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Constitutionality

Durational residency requirement in state welfare program imposed unconstitutional restraint on right to travel. Pease v. Hansen, 404 U S 70, 30 L Ed 2d 224, 92 S Ct 318, following Shapiro v. Thompson, 394 U S 618, 22 L Ed 2d 600, 89 S Ct 1322, and reversing 157 M 99, 483 P 2d 720.

Despite the invalidity of the requirement of one year's residency in the state in order to qualify for relief, county's obligation to pay general relief assistance may be limited by legislature's residency requirements as it did in section 71-302; where no provision has been made to care for transients, state must provide relief until such time as indigent has established county residency. Pease v. Hansen, — M —, 494 P 2d 925.

CHAPTER 4—PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD-AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

71-401. Provision for administration.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 5—PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

71-503. Administration.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 6—PUBLIC WELFARE ACT PART 5—TO PROVIDE FOR AID TO NEEDY BLIND INDIVIDUALS IN CONFORMITY WITH TITLE 10 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

71-602. Administration.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 7—PUBLIC WELFARE ACT PART 6—TO PROVIDE FOR SERVICES FOR CRIPPLED CHILDREN AND CHILD WELFARE SERVICES, IN CONFORMITY WITH TITLE 5, PARTS 2 AND 3 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935, OR AS AMENDED, AND TRANSFERRING THE POWERS AND DUTIES OF THE STATE BUREAU OF CHILD PROTECTION AND THE ORTHOPEDIC COMMISSION TO THE AUTHORITY AND SUPERVISION OF THE STATE DEPARTMENT OF PUBLIC WELFARE

71-707. Organization and administration of activities.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section
71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.
71-1004. Amounts of payments.
71-1008. Conformity with acts of federal government.

71-1002. Administration.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payment shall be made under this act to any person who:

(a) to (c). * * * [Same as parent volume.]

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Com-

pensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of one hundred seventy-five dollars ($175) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than one hundred seventy-five dollars ($175), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and one hundred seventy-five dollars ($175) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973.

Amendments

The 1973 amendment increased the monthly amount specified in three places in subdivision (d) from $158.50 to $175.00.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workmen's compensation; been determined by the division of workmen's compensation to be entitled payment under this chapter for silicosis, shall be granted a payment by the division of workmen's compensation of one hundred seventy-five dollars ($175) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973.

Amendments

The 1973 amendment substituted references to the division of workmen's compensation for references to the industrial accident board; and increased the monthly amount specified near the end of the first sentence from $158.50 to $175.00.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workmen's compensation of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed one hundred seventy-five dollars ($175) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973.

Amendments

The 1973 amendment substituted "division of workmen's compensation" for "industrial accident board" in the first sentence; and increased the monthly amount specified in the second sentence from $158.50 to $175.00.

CHAPTER 12—PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

71-1201. Provision for administration.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 14—SERVICES TO THE BLIND

71-1402. Administrator.

Cross-References

State department of public welfare and administrator abolished and functions transferred, sec. 82A-1902 (1).

CHAPTER 15—MEDICAL ASSISTANCE

Section
71-1516. Eligibility requirements for medical assistance.
71-1517. Amount, scope and duration of assistance.

71-1511. Provisions for administration.

Cross-References

State department of public welfare abolished and functions transferred, sec. 82A-1902 (1).

71-1516. Eligibility requirements for medical assistance. Medical assistance shall be granted in behalf of all persons who reside in the state of Montana, including residents temporarily absent from the state and who meet any of the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) Persons in medical institutions who, if they were no longer in such institution, would be eligible for financial assistance under any one of the above programs;

(5). * * * [Same as parent volume.]

(6) All children under twenty-one who are in foster care under the supervision of the state;

(7) All persons whose income is less than one hundred thirty-three and one-third per cent (133 1/3%) of the amounts specified as maximum income levels for federally aided categories of assistance;

(8) All medically needy children under twenty-one (21) years of age as defined by the state department of social and rehabilitation services;

(9) All children under twenty-one (21) who were in foster care under the supervision of the state, and who have been adopted as "hard-to-place" children.

History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 20 and once by Ch. 277. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 20, Laws of 1973, added subdivisions (7) and (8); and made a minor change in phraseology.

Chapter 277, Laws of 1973, added as subdivision (7) the language shown as subdivision (9) above.

71-1517. Amount, scope and duration of assistance. The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the state department. Payments on behalf of persons in state operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available. However, if available funds are not sufficient to provide an adequate medical care program for all eligible persons, first priority shall be given to those eligible persons enumerated in section 1, subsections (1) through (6) [71-1516 (1) to (6)] of this act and in such event the state department shall by appropriate rules and regulations have the right to limit, reduce, or otherwise curtail the amount, scope, and duration of the medical and remedial care and services made available to those individuals enumerated in section 1, subsections (7) and (8) [71-1516 (7) and (8)] of this act to the extent necessary to assure the implementation of the established priorities. For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in section 1, subsections (7) and (8) [71-1516 (7) and (8)] of this act, the state department shall establish a maintenance standard.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971; amd. Sec. 2, Ch. 20, L. 1973.

Amendments

The 1973 amendment added the fourth and fifth sentences.

CHAPTER 16—ECONOMIC OPPORTUNITY AND POVERTY RELIEF

71-1601. Purpose and intent of act.

Compiler's Notes

Executive Reorganization Order 4-71, signed Aug. 30, 1972 and effective Sept. 1, 1972, vested responsibility for administration of this program in the economic opportunity division, department of intergovernmental relations.

CHAPTER 18—PROGRAM FOR ADOPTION OF HARD-TO-PLACE CHILDREN

Section

71-1801. Purpose.
71-1802. Definitions.
71-1803. Administration and regulation.
71-1804. Adoption of rules—amount of assistance.
71-1805. County to reimburse state for half of assistance provided.

71-1801. Purpose. It is the purpose of this act to encourage and promote the adoption of children who are difficult to place in adoptive homes. It is the intent of the legislative assembly to offer prospective adoptive parents information concerning relinquished children, information and assistance in completing the adoption process, and financial aid which may be required to enable them to adopt a "hard-to-place" child.

History: En. Sec. 1, Ch. 277, L. 1973.

Title of Act

An act to amend section 71-1516, R. C. M. 1947, to include adopted children who have been defined as "hard-to-place" within eligibility requirements for medical assistance; and to provide financial assistance to the adoptive parents of "hard-to-place" children.

71-1802. Definitions. For the purposes of this act, a "hard-to-place child" is a child who is disadvantaged because of ethnic background, race, color or language; is handicapped because of physical, mental or emotional

defects; is three (3) years of age or older; or is a sibling of any of the foregoing. If such "hard-to-place child" is under the permanent custody of any licensed state welfare agency other than the department of social and rehabilitation services, that agency must have exhausted all possible attempts for permanent adoption including reference to the department of social and rehabilitation services.

History: En. Sec. 3, Ch. 277, L. 1973.

71-1803. Administration and regulation. The state department of social and rehabilitation services shall establish, administer and regulate the program of subsidized adoptions established by this act. The department shall keep such records as are necessary to evaluate the program and shall report annually to the governor concerning the number of children adopted under the program, the cost of the program and any other pertinent information.

History: En. Sec. 4, Ch. 277, L. 1973.

71-1804. Adoption of rules—amount of assistance. The department shall establish rules and regulations concerning financial assistance in addition to the medical assistance provided by section 71-1516 to persons who adopt "hard-to-place" children who were, immediately prior to their adoption, legal wards of the department. The amount of the assistance may not exceed the cost of the care of the child in a foster home. Special-purpose assistance may be allowed in the event a child requires a special service, but such assistance may not exceed the cost of similar services provided by the department for children who are legal wards of the department.

History: En. Sec. 5, Ch. 277, L. 1973.

71-1805. County to reimburse state for half of assistance provided. The county in which reside the adoptive parents of a "hard-to-place" child shall reimburse the department for one-half (1/2) of the assistance provided to the adoptive parents exclusive of the federal share of such assistance.

History: En. Sec. 6, Ch. 277, L. 1973.

CHAPTER 19—PROTECTIVE SERVICES FOR DEVELOPMENTALLY DISABLED

Section

71-1901. Definitions.
71-1902. Legislative findings—rules and regulations—powers in establishment of system.
71-1903. Application for protective services—contents—department as guardian or trustee—decision as to eligibility.
71-1904. Petition in district court to make developmentally disabled person ward of department—contents—hearing—order—disabilities imposed.
71-1905. Protective and supportive services provided.
71-1906. Department as conservator of small estate of person adjudicated developmentally disabled.
71-1907. Manner of providing protective services.
71-1908. Bond not required—exception.
71-1909. Ward to pay for services received if able—accounting by department—claims for state reimbursement.
71-1910. Annual report by field staff to director—report by director to legislature.
71-1911. Hearing to determine whether appointment of department to be continued.
71-1912. Clerk of court to keep records separate—available to public.
71-1913. Acceptance and expenditure of donated funds.

71-1901. Definitions. As used in this act, unless the context otherwise requires:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(3) "Ward" means a person for whom protective services are rendered pursuant to the provisions of this act.

(4) "Respondent" means a person in whose interest proceedings are brought under this act.

History: En. Sec. 1, Ch. 508, L. 1973.

Title of Act

An act establishing a program of protective services for the mentally disabled.

71-1902. Legislative findings—rules and regulations—powers in establishment of system. (1) In recognition of the need to provide supervision and protection from exploitation for the developmentally disabled, and in acknowledgment of the desirability of providing such services outside the state institutions, the legislative assembly hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this act for developmentally disabled persons.

(2) The director of the department shall adopt rules and regulations for the administration of this article. The department shall develop a statewide system of protective service in accordance with regulations and standards established by the department with respect to this program, the department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;

(c) accept appointment by any district court as guardian, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person.

History: En. Sec. 2, Ch. 508, L. 1973.

71-1903. Application for protective services—contents—department as guardian or trustee—decision as to eligibility. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services provided in this act, and that the department is currently able to supply services to such person. A parent may name the department as guardian of the mentally disabled person in his will. A parent may also name the department as guardian or trustee of the mentally disabled person, to assume such duties during the parents lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward.

(2) Application for protective services under this act shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules and regulations of the department. The rules and regulations of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to ensure that only eligible persons receive protective services under this act. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services.

History: En. Sec. 3, Ch. 508, L. 1973.

71-1904. Petition in district court to make developmentally disabled person ward of department—contents—hearing—order—disabilities imposed. (1) Any developmentally disabled person may be made a ward of the department by a judicial proceeding which shall be initiated when any reputable person, including the potential ward, or the department, shall file in the district court of the county in which the respondent resides or is physically present, a verified petition alleging that the respondent is a developmentally disabled person, describing the nature and extent of the respondent's disability, and alleging that it will be in the best interests of the respondent that he be made a ward of the department. The petition shall be accompanied by a report of the findings of an evaluation team composed of, but not limited to, a physician, a psychologist, and a social worker, and expressing the belief that the respondent is developmentally disabled to an extent which would cause the respondent to benefit from the protective services provided for in this act.

(2) Upon the filing of such verified petition and team evaluation statement, the court shall issue an order fixing the time and place of a hearing on such petition, which time shall be no earlier than seven (7) days nor later than fourteen (14) days after the filing thereof. Such order shall appoint an attorney for the respondent, whose duty shall be to make such investigation as is necessary to protect the rights of the respondent and to attend all hearings in the matter. Such order also shall advise the respondent of his right to appear at the hearing, and shall give the address and telephone number of the attorney. Personal service shall be made on the respondent, the department, the county attorney, and attorney at least five (5) days prior to the hearing date. The department, the county attorney, and the attorney may waive service.

(3) Upon hearing, the petitioner shall present the evidence to the court. When the court is fully advised, it shall determine whether the respondent is a developmentally disabled person who would benefit from the protective services provided for in this act and whether it is in the best interest of the respondent that he be made a ward of the department and,

if it is so found, the court shall enter an order that the respondent is made the ward of the department; otherwise, the petition shall be dismissed.

(4) In any order making the respondent a ward of the department, the court shall specify any legal disabilities to be imposed upon the ward. The order may contain, where appropriate, specific provisions concerning the right to operate a motor vehicle, the right to enter into contracts, or any other civil, political, personal, or property right. No person who becomes a ward of the department shall lose any legal right by reason thereof except as provided in this subsection (4).

(5) Every proceeding under this act shall be civil in nature and shall be entitled "In the interest of ....., respondent", or "In the interest of ....., ward", as the case may be.

History: En. Sec. 4, Ch. 508, L. 1973.

71-1905. Protective and supportive services provided. (1) The department shall provide, in the manner set forth, for each of its wards, those protective and supportive services which the department believes necessary to help the ward function, to the extent of his capabilities, as an independent, self-sufficient member of society. Services under this act may include, but shall not be limited to, assistance in obtaining;

(a) housing, clothing, and food;

(b) education and training for living in society and, where possible, for employment;

(c) employment;

(d) financial benefits to which the ward may be entitled;

(e) medical services and supplies;

(f) necessary legal services;

(g) marshaling, protection, and insurance of the ward's property;

(h) financial advice and services;

(i) participation in cultural and recreational activities.

(2) Services under this act also may include, but shall not be limited to, assistance in preventing exploitation of the ward by others, and in preventing injury to the ward and injury by the ward to others.

History: En. Sec. 5, Ch. 508, L. 1973.

71-1906. Department as conservator of small estate of person adjudicated developmentally disabled. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled, if the department is providing protective services for such person, and if it shall appear to the court that the value of the assets of such person does not exceed ten thousand dollars ($10,000), and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of a general guardian.

History: En. Sec. 6, Ch. 508, L. 1973.

71-1907. Manner of providing protective services. The department shall engage in the direct provision of protective services to wards. If a service comprehended by this act is provided by persons or agencies acting under other state or federal laws, the department shall co-operate with such persons or agencies in obtaining such services for wards of the department. If necessary services cannot be obtained without charge, the department may purchase such services from individuals, voluntary agencies, community centers, or clinics and, to the extent not prohibited by law, from other state agencies.

History: En. Sec. 7, Ch. 508, L. 1973.

71-1908. Bond not required—exception. The department shall not be required to post bond in proceedings under this act unless serving as a court-appointed conservator as provided in section 6 [71-1906] in which case it shall furnish such bond as required by law.

History: En. Sec. 8, Ch. 508, L. 1973.

71-1909. Ward to pay for services received if able—accounting by department—claims for state reimbursement. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward, or, if the governing instrument permits, the trustee of such ward, to pay all reasonable and proper costs of proceedings in the interest of such ward under this act, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward, or to reimburse the department for funds expended for such costs or services.

Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to three per cent (3%) of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. All of the provisions of subsections (2) and (3) of section 4 [71-1904 (2) and (3)] concerning notice and hearings shall apply to hearings under this section. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(2) Except as provided in subsection (1) of this section, the net cost of proceedings under this act and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify to the department of administration the amount. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration.

History: En. Sec. 9, Ch. 508, L. 1973.

71-1910. Annual report by field staff to director—report by director to legislature. (1) With respect to each ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the ward, including specifically an accounting for any transactions with property of the ward, other than as a court-appointed conservator, the current condition of the ward, and the recommendations of the department as to whether its services should continue or be terminated, and whether other proceedings should be instituted. If the department is serving pursuant to court order under section 4 [71-1904], a copy of such report also shall be filed with such court.

(2) No later than December 31, 1974, the director of the department shall present a complete report to the legislature on the program authorized by this act, with special emphasis on an evaluation of the success of the program, all relevant expenses, and projections of the cost of extending the services provided for in this act to all eligible developmentally disabled persons in this state.

History: En. Sec. 10, Ch. 508, L. 1973.

71-1911. Hearing to determine whether appointment of department to be continued. Upon the written request of the ward, the department, or any other reputable person, or upon its own motion, the appointing court shall hold a hearing to determine whether the appointment of the department should be terminated or continued. All of the provisions of subsections (2) and (3) of section 4 [71-1904 (2) and (3)] concerning notice and hearing shall apply to hearings under this section. No ward may request such hearing more frequently than at six (6) month intervals. Upon such hearing, the court shall enter its order continuing or terminating the appointment of the department.

History: En. Sec. 11, Ch. 508, L. 1973.

71-1912. Clerk of court to keep records separate—available to public. The clerk of the district or probate court shall maintain records and papers in proceedings under this act separately. The information contained in such records shall be available to public officials, attorneys, and persons having bona fide business dealings with the respondents concerned.

History: En. Sec. 12, Ch. 508, L. 1973.

71-1913. Acceptance and expenditure of donated funds. The department may accept and expend grants, gifts, and legacies of money and other property, including federal grants, on behalf of the state of Montana, in furtherance of the purposes of this act, subject to any reasonable and proper conditions any donor may attach which are acceptable to the executive director of the department and which do not violate the constitution, laws or public policy of the state of Montana.

History: En. Sec. 13, Ch. 508, L. 1973.

Emergency Clause

Section 14 of Ch. 508, Laws 1973 read "The legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety."

CHAPTER 20—COMMUNITY HOMES FOR DEVELOPMENTALLY DISABLED

Section
71-2001. Purposes.
71-2002. Community home for developmentally disabled—definition—limitation on number of residents.
71-2003. Nonprofit corporations and associations authorized—establishment of homes by department.
71-2004. Department contracts with nonprofit corporations—governmental units providing for community homes.
71-2005. Local control of homes subject to departmental rules.
71-2006. Federal aid.
71-2007. Standards, rules and regulations for licensing.

71-2001. Purposes. The legislative assembly, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for care in existing state institutions, establishes by this act a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes through local nonprofit corporations.

History: En. Sec. 1, Ch. 373, L. 1973.

Title of Act

An act providing for nonprofit organizations to establish community homes for the developmentally disabled, and providing authority to the department of institutions to make rules and regulations for the operation of the homes.

71-2002. Community home for developmentally disabled—definition—limitation on number of residents. A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two (2) to eight (8) developmentally disabled persons established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight (8) in such a community home, except that the department may grant written approval for more than eight (8), but not more than twelve (12) persons.

History: En. Sec. 2, Ch. 373, L. 1973.

71-2003. Nonprofit corporations and associations authorized—establishment of homes by department. (1) Nonprofit corporations or associations in any community may be formed or organized for the purposes of establishing a community home or homes for the developmentally disabled under this act and to receive services, facilities, and funds as the department of institutions and other governmental units may be authorized by law to provide.

(2) The department of institutions may also establish a community home or homes for the developmentally disabled under this act and receive services, facilities, and funds as the department of institutions and other governmental units may be authorized by law to provide.

History: En. Sec. 3, Ch. 373, L. 1973.

71-2004. Department contracts with nonprofit corporations—governmental units providing for community homes. (1) The department of institutions shall be authorized to contract with nonprofit corporations or

associations to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are authorized, at their own expense, to provide funds, materials, facilities, and services for community homes for the developmentally disabled.

History: En. Sec. 4, Ch. 373, L. 1973.

71-2005. Local control of homes subject to departmental rules. Community homes for the developmentally disabled shall be under local control, and the nonprofit corporations or associations operating said community homes are authorized to establish homes and programs they believe in the best interest of their home; provided, however that the director of the department of institutions shall adopt reasonable rules, regulations, and standards to carry out the administration and purposes of this act.

History: En. Sec. 5, Ch. 373, L. 1973.

71-2006. Federal aid. The department of institutions is authorized to apply for and receive federal aid money or other assistance which may be available for programs in the nature of the program created by this act.

History: En. Sec. 6, Ch. 373, L. 1973.

71-2007. Standards, rules and regulations for licensing. The state department of health and environmental sciences shall promulgate and adopt standards, rules and regulations for the licensing of community homes for the developmentally disabled to ensure the health and safety of the residents of such homes.

History: En. Sec. 7, Ch. 373, L. 1973.

Separability Clause

Section 8 of Ch. 373, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

TITLE 72—RAILROADS

Chapter
1. Railroads—regulation by board of railroad commissioners, 72-102, 72-118, 72-169.

CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

Section
72-102. Oath.
72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint.
72-169. Protection of employees affected by closure of station.

72-102. (3780) **Oath.** Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

History: En. Sec. 2, Ch. 37, L. 1907; Sec. 4364, Rev. C. 1907; re-en. Sec. 3780, R. C. M. 1921; amd. Sec. 31, Ch. 177, L. 1965; amd. Sec. 5, Ch. 7, L. 1973; amd. Sec. 26, Ch. 100, L. 1973.

Amendments

Both 1973 amendments deleted a specific reference to section 1, article XIX of the former constitution.

Repealing Clause

Section 6 of Ch. 7, Laws 1973 read "Section 59-414, R. C. M. 1947, is repealed."

72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided. The said board shall make and establish reasonable rates for the transportation of freight within the state of Montana, and shall prescribe rates, tolls and charges for all other service performed by any railroad subject hereto. No change or revision of any rate, charge, classification or rule of service contained in any tariff, classification or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the board. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(1). * * * [Same as parent volume.]

(2) by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided, however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared

testimony and exhibits from the railroad as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.

Upon its own initiative, or upon the complaint of any interested party filed with the board within twenty (20) days after the date upon which a change or revision of any rate, fare, change or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred eighty (180) days, provided, however, that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interests or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided, however, that unless such hearing is held and such order is issued within one hundred eighty (180) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

The board may, on its own motion or on the complaint by a shipper or other person interested investigate any rate, classification or rule approved and in effect for transportation of freight by any railroad within the state of Montana. The said board must, within sixty (60) days after the commencement of an investigation on the board's initiative, or after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R. C. M. 1921; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973.

Amendments

The 1973 amendment inserted the third, fourth and fifth sentences in subdivision (2); increased the time for filing a complaint under the second paragraph of subdivision (2) from fifteen to twenty days; extended the maximum period for suspension of a rate under the first sentence of the second paragraph of subdivision (2) from 120 to 180 days; substituted "by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent" for "by the board of any complaint filed by any interested party to any proposed tariff change or revision" in the proviso to the first sentence of the second paragraph in subdivi-

sion (2); extended the period during which a hearing may be held as set forth near the end of the second paragraph of subdivision (2) from 120 to 180 days; and extended the time for determination of the justness of a rate as set forth in the second sentence of the third paragraph of subdivision (2) from forty to sixty days.

Effective Date

Section 2 of Ch. 429, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

72-169. Protection of employees affected by closure of station. Whenever any railroad, as defined in section 72-115 is granted the authority to close a railroad station or facility by order of the public service commission, it shall be incumbent on the commission to require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the six (6) months prior to such closure. The equal job and pay agreement must be in effect for a period of four (4) years or, in the alternative, the number of years the employee has been employed prior to closure, whichever is shorter. Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

History: En. Sec. 1, Ch. 377, L. 1973.

Title of Act

An act to provide for job protection for railroad employees affected by closure of railroad stations and facilities.

CHAPTER 5—REGULATIONS CONCERNING RIGHT OF WAY FENCES AND CATTLE GUARDS

Section
72-507. [Transferred from Title 94.]

72-507. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-35-174. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as section 94-35-174.

CHAPTER 6—GENERAL REGULATION OF BUSINESS OF RAILROADS

Section
72-671, 72-672. [Transferred from Title 94.]

72-671, 72-672. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-35-109 and 94-35-203. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
72-671	94-35-109
72-672	94-35-203

TITLE 73—RECORDING TRANSFERS

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section
73-213. Validation of conveyances recorded after defective execution—1973 act.

73-213. Validation of conveyances recorded after defective execution —1973 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside which was, previous to January 1, 1973, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged prior to January 1, 1973; imparting notice by recording thereof; and providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

TITLE 74—SALES AND EXCHANGE

CHAPTER 6—RETAIL INSTALLMENT SALES

74-603. Licensing of sales finance companies required.

Cross-References

Position of superintendent of banks abolished and functions transferred, sec. 82A-402 (1).

TITLE 75—SCHOOLS

Chapter
56. Board of public education—board of regents—state board of education, 75-5609 to 75-5619.
57. Superintendent of public instruction, 75-5701, 75-5702, 75-5707.
58. County superintendent, 75-5801, 75-5802.
59. School district trustees and officers, 75-5903, 75-5914.1, 75-5915, 75-5916, 75-5933, 75-5941.
60. Teacher certification, 75-6001.
61. Employment of teachers, superintendents and principals, 75-6105.1, 75-6112, 75-6129 to 75-6132.
62. Teachers' retirement system, 75-6203, 75-6204, 75-6206 to 75-6208, 75-6212, 75-6213, 75-6219.
63. Compulsory attendance and tuition agreements, 75-6303, 75-6323.
64. School elections, 75-6410, 75-6412.
65. School district organization and reorganization, 75-6503, 75-6508, 75-6517, 75-6532, 75-6534.
66. Opening and closing of schools, 75-6608.
67. Budget system, 75-6711.
68. Financial administration, 75-6805, 75-6806, 75-6808, 75-6808.1 to 75-6809.1, 75-6810, 75-6811, 75-6811.1, 75-6812.
69. State equalization aid to public schools, 75-6902 to 75-6908, 75-6912, 75-6913, 75-6915 to 75-6918, 75-6921 to 75-6923, 75-6927.
70. School buses and transportation of pupils, 75-7002, 75-7004, 75-7005, 75-7008, 75-7013, 75-7019.
71. School district and county school bonds, 75-7102 to 75-7104, 75-7107, 75-7116.
72. Elementary tuition and special purpose funds, 75-7204, 75-7214.
73. Public school fund, educational co-operative agreements and grants to schools, 75-7303.
74. School terms and holidays, 75-7403.
75. School accreditation, curriculum and adult education, 75-7507.
76. Textbooks, 75-7604, 75-7605, 75-7607.
77. Vocational and technical education, 75-7709.
78. Special education for exceptional children, 75-7810.
79. Traffic education, 75-7906.
80. School food services, 75-8007.
81. Community college districts, 75-8107, 75-8113, 75-8122.
82. School sites, construction and leasing, 75-8205, 75-8206.1, 75-8211.
83. Miscellaneous provisions, 75-8308.1 to 75-8308.7.
86. Finance for university system, 75-8601.
87. Students in university system, 75-8702, 75-8706 to 75-8711.

CHAPTER 56—BOARD OF PUBLIC EDUCATION—BOARD OF REGENTS —STATE BOARD OF EDUCATION

Section
75-5609. Definitions.
75-5610. Composition of boards—appointments—terms—oath.
75-5611. Appointment of commissioner of higher education—term—compensation—staff.
75-5612. Officers of boards—quorum.
75-5613. Quarterly meetings of boards—called meetings—notice of meetings.
75-5614. Per diem of board members—expenses.
75-5615. Combined boards as state board—budget review—officers—meetings—quorum.
75-5616. Adoption of rules—seal—record of proceedings.
75-5617. Division of powers among boards.
75-5618. Incumbent members of board of education retained—new appointments.
75-5619. Student representative on board of regents—term.

75-5601 to 75-5606. Repealed.

Repeal

Sections 75-5601 to 75-5606 (Secs. 2 to 7, Ch. 5, L. 1971; Sec. 1, Ch. 352, L. 1971), relating to the board of education, were

repealed by Sec. 16, Ch. 344, Laws 1973. For new law, see secs. 75-5609 to 75-5619. Board of education in repealed sections was created by sec. 82A-501.

75-5607. Powers and duties.

Cross-References

Division of powers among boards, sec. 75-5617.

75-5608. Repealed.

Repeal

Section 75-5608 (Sec. 9, Ch. 5, L. 1971), relating to powers and duties of board of education, was repealed by Sec. 16, Ch. 344, Laws 1973. For new law, see secs. 75-5609 to 75-5619.

75-5609. Definitions. (1) The board of public education is the board created by article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) "Board of regents" means the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The state board of education is the board composed of the board of public education and the board of regents as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

(4) "Commissioner" means the commissioner of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

History: En. Sec. 1, Ch. 344, L. 1973.

Title of Act

An act to create the board of public education and the board of regents of higher education, and to establish the state board of education as provided for by article X, section 9 of the 1972 Montana constitution; to assign powers and duties to the boards; to amend sections 79-2002 and 82-401, R. C. M. 1947; and to repeal sections 75-5601 through 75-5606 and 75-5608, R. C. M. 1947.

75-5610. Composition of boards — appointments — terms — oath. (1) The board of public education consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner are ex officio nonvoting members of the board of public education.

(2) The board of regents consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction and commissioner are ex officio nonvoting members of the board of regents.

(3) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four (4) may be from one (1) congressional district;

(b) Not more than four (4) may be affiliated with the same political party;

(c) The terms of members appointed to each board shall be seven (7) years except as provided in section 11 [75-5619] of this act;

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointment shall preserve the balance required by subsections (a) and (b) above;

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(4) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before he may serve as a member of either board.

History: En. Sec. 2, Ch. 344, L. 1973.

75-5611. Appointment of commissioner of higher education—term—compensation—staff. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term and duties of the commissioner and shall set his compensation.

(3) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973.

75-5612. Officers of boards—quorum. (1) The board of public education and the board of regents shall each select a chairman from among their appointed members.

(2) The superintendent of public instruction shall serve as secretary to the board of public education, and the commissioner shall serve as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

History: En. Sec. 4, Ch. 344, L. 1973.

75-5613. Quarterly meetings of boards—called meetings—notice of meetings. (1) The board of public education and the board of regents shall meet quarterly at the same location on the second Monday of April, July, September and December.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary or by four (4) appointed members.

(3) The secretary to each board shall mail notice to each member at least seven (7) days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973.

75-5614. Per diem of board members—expenses. Appointed members of the board of public education and the board of regents are entitled to twenty-five dollars ($25) per day and their necessary and actual expenses incurred for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973.

75-5615. Combined boards as state board—budget review—officers—meetings—quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning, and for co-ordinating and evaluating policies and programs for the public educational systems of the state. The state board of

education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education on any two of the dates specified in section 5, subsection (1) [75-5613 (1)].

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight (8) appointed members, four (4) each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973.

Commission on Post-Secondary Education

Chapter 490, Laws of 1973, created a temporary commission on post-secondary education to study and plan for post-secondary education in the state and to report its recommendations to the governor, the legislature and the state board of education by December 1, 1974.

75-5616. Adoption of rules—seal—record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(a) Adopt rules not inconsistent with the constitution or laws of the state of Montana, necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(b) Adopt and use an official seal to authenticate its official acts; and

(c) Keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973.

75-5617. Division of powers among boards. (1) The powers and duties assigned to the "board of education," "state board of education" or "state board for vocational education" in Title 75 and wherever else appearing in the Revised Codes of Montana, 1947, except in chapters 81 and 84 through 88 of Title 75, subsections (14) and (15) of 75-5607, sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911

and except as provided in subsection (3) below, are hereby assigned to the board of public education created in article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) The powers and duties assigned in chapters 81 and 84 through 88 of Title 75, R.C.M. 1947, and subsections (14) and (15) of 75-5607 R.C.M. 1947, as well as powers and duties assigned to the "state board of education ex officio regents," "state board of education of the state of Montana, ex officio regents of the Montana university system," "regents," "regents of the greater university system," "state board of regents" or "regents of the Montana system" wherever appearing in the Revised Codes of Montana, including those assigned to the "state board of education" and the "board of education" in sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and excepting as provided in subsection (3) below, are hereby assigned to the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The powers and duties assigned in chapters 1 and 5 of Title 82A, R.C.M. 1947, to the "state board of education" or the "board of education" are hereby assigned to the state board of education composed of the board of public education and the board of regents of higher education as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

History: En. Sec. 9, Ch. 344, L. 1973.

75-5618. Incumbent members of board of education retained—new appointments. (1) It is the intent of the legislature to provide smooth transition from the board of education provided for by the 1889 constitution to the board of public education and to the board of regents both created by the 1972 Montana constitution.

(2) In accordance with section 6, subsection (3) of the transition schedule of the 1972 Montana constitution, members of the 1889 board of education appointed before July 1, 1973, may continue to serve for the term to which each was appointed. A member appointed to the 1889 board of education before July 1, 1973, who chooses to fulfill his term of office may resign from the 1889 board of education and shall notify the governor of his resignation on or before July 1, 1973; and the governor shall appoint him on or before July 1, 1973, to serve on either the board of public education or the board of regents for the remainder of the term for which he was appointed.

(3) Appointments to fill vacancies existing on July 1, 1973, on the board of public education and on the board of regents:

(a) shall be made on or before July 1, 1973, so as to assure full membership on each board; and

(b) shall be for such number of months or years as will cause the expiration of one term on each board on February 1 of each year thereafter.

(4) Appointments to each board in succeeding years shall be made in accordance with section 2, subsection (3)(c) [75-5610 (3) (c)] of this act.

History: En. Sec. 10, Ch. 344, L. 1973.

75-5619. Student representative on board of regents—term. (1) One seat of the appointed members on the board of regents shall be reserved for membership by a student appointed by the governor.

(2) The student shall be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents.

(3) The length of term of the student member shall be determined by the governor for not less than one (1) year and not more than four (4) years.

(4) The provisions of section 2, subsections (3)(a) and (b) [75-5610 (3)(a) and (b)] of this act shall not apply to the student member and shall not affect the balance of the remaining appointive membership on the board of regents.

History: En. Sec. 11, Ch. 344, L. 1973.

CHAPTER 57—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section
75-5701. Definition.
75-5702. Election and qualification.
75-5707. Powers and duties.

75-5701. Definition. As used in this title, unless the context clearly indicates otherwise, "superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

History: En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "executive branch" for "executive department"; and deleted "section 1 of article VII of" before "the constitution."

75-5702. Election and qualification. A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of superintendent of public instruction who:

(1) is twenty-five (25) years of age or older at the time of his election;

(2) to (4). * * * [Same as parent volume.]

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973.

Amendments

The 1973 amendment reduced the age requirement in subdivision (1) from thirty to twenty-five years; and made minor changes in phraseology.

75-5707. Powers and duties. The superintendent of public instruction shall have the general supervision of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) to (16). * * * [Same as parent volume.]

(17) distribute state equalization aid in support of the foundation program in accordance with the provisions of sections 75-6908, 75-6918, and 75-6919;

(18) estimate the state-wide equalization level for the foundation program in accordance with the provisions of section 75-6920;

(19) to (35). * * * [Same as parent volume.]

(36) administer the school food services program in accordance with the provisions of sections 75-8002, 75-8003, and 75-8004;

(37) to (41). * * * [Same as parent volume.]

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted "state interest and income moneys and" after "distribute" at the beginning of subdivision (17); deleted "the state-wide per census child payment for the state interest and income moneys and" after "estimate" at the beginning of subdivision (18); deleted from the end of subdivision (18) a reference to section 75-6911; and made minor changes in phraseology.

75-5708. Repealed.

Repeal

Section 75-5708 (Sec. 17, Ch. 5, L. 1971), relating to the school census and the distribution of state interest and income moneys, was repealed by Sec. 15, Ch. 137, Laws 1973.

CHAPTER 58—COUNTY SUPERINTENDENT

Section
75-5801. Definition.
75-5802. Election and qualification.

75-5801. Definition. As used in this title, unless the context clearly indicates otherwise, "county superintendent" means the county government official who is the school officer of the county.

History: En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "who is the school officer of the county" at the end of the section for "designated as the school officer of the county by section 5 of article XVI of the constitution of Montana."

75-5802. Election and qualification. A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of the county superintendent who:

(1) is a qualified elector;

(2) and (3). * * * [Same as parent volume.]

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted a new clause (1) for a clause reading "possesses the qualifications required by the constitution of the state of Montana."

75-5810. Repealed.

Repeal

Section 75-5810 (Sec. 28, Ch. 5, L. 1971), relating to the school census, was repealed by Sec. 15, Ch. 137, Laws 1973.

CHAPTER 59—SCHOOL DISTRICT TRUSTEES AND OFFICERS

Section
75-5903. Request and determination of number of high school district additional trustee positions.
75-5914.1. Nomination of candidates by petition in first class elementary district.
75-5915. Conduct of election and ballot.
75-5916. Qualification and oath.
75-5933. Powers and duties.
75-5941. Personal liability of trustees.

75-5903. Request and determination of number of high school district additional trustee positions. As provided in subsection (2) (b) of section 75-5902, each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provision of subsection (2) (a) of section 75-5902, request the establishment of such additional trustee positions.

A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(1) to (3). * * * [Same as parent volume.]

The number determined in subsection (3) above shall be the number of additional trustee positions except that the number of additional trustee positions shall not exceed four (4) in a first or second class high school district or two (2) in a third class high school district except when two-thirds (2/3) or more of the high school enrollment of the high school district and two-thirds (2/3) or more of the taxable valuation of the high school district are located outside of the elementary district which has its trustees placed on the high school district trustees. When this situation exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located and one (1) additional trustee shall be elected at large in the high school district.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973.

Amendments

The 1973 amendment combined the two final paragraphs; deleted provision for the designation of an additional trustee position by the county superintendent; inserted "When this situation exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located" in the final sentence; and substituted "one (1) additional trustee" for "The person who fills such additional trustee position" in the final sentence.

75-5914. Repealed.

Repeal

Section 75-5914 (Sec. 43, Ch. 5, L. 1971), relating to nomination of trustee candidates in first class elementary districts by a nominating caucus, was repealed by Sec. 3, Ch. 165, Laws 1973. For new law, see sec. 75-5914.1. Section 1 of Ch. 259, Laws 1973 purported to amend this section. Under the provisions of section 43-515, the amendment is void.

75-5914.1. Nomination of candidates by petition in first class elementary district. Any twenty (20) electors qualified under the provisions of section 75-6410 of any first class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than forty (40) days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in section 75-5915.

History: En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973.

Title of Act

An act providing for nomination by petition in first class elementary districts; amending section 75-5915, R. C. M. 1947; and repealing section 75-5914, R. C. M. 1947.

75-5915. Conduct of election and ballot. The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of section 75-6406, except as provided in section 75-5914.1. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections. Any elector qualified to vote under the provisions of section 75-6410 may vote at a trustee election. The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: * * * [Same as parent volume.]

In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need to be used. The ballot also shall be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

When additional trustees in a high school district are to be elected, a separate ballot shall be used in each nominating district showing only the names of those candidates for which the electors of such district are entitled to vote.

History: En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 165 and once by Ch. 259. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 165, Laws of 1973, changed the statutory reference in the first sentence from 75-5914 to 75-5914.1; and deleted "except that write-in voting shall not be available in a first class elementary district" from the end of the second paragraph.

Chapter 259, Laws of 1973, deleted the reference to section 75-5914 at the end of the first sentence and made an additional deletion identical to that made by chapter 165.

Repealing Clause

Section 3 of Ch. 165, Laws 1973 read "Section 75-5914, R. C. M. 1947, is repealed."

75-5916. Qualification and oath. Any person who receives a certificate of election as a trustee under the provisions of section 75-6423 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not more than fifteen (15) days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by section 75-5918 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "more" for "less" in the second sentence of the first paragraph.

75-5932. General powers and duties and record of acts.

Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. Moran v. School Dist. No. 7, 350 F Supp 1180.

75-5933. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel chapter of this title;

(2) to (16). * * * [Same as parent volume.]

(17) establish and maintain the school food services of the district in accordance with the provisions of the school food services chapter of this title;

(18) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of education or the rules and regulations of the superintendent of public instruction; and

(19) may require that all children at the time they are first enrolled in school, or within a reasonable time thereafter, be successfully immunized against those communicable diseases, as recommended by the state department of health and environmental sciences.

The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice and shall be set by the state department of health and environmental sciences.

A child may be exempted from this requirement upon certification from a licensed physician stating that the physical condition of the child is such

that the immunization would seriously endanger his life or health, or a written statement signed by one (1) parent or guardian that he is an adherent of a religious denomination whose religious teachings are opposed to the immunization.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 69, and once by Ch. 280. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 69, Laws of 1973, added subdivision (19), including the last two paragraphs of the section.

Chapter 280, Laws of 1973, substituted "other assistant" for "district superintendent" in subdivision (1); and inserted "upon the recommendation of the district superintendent, . . . sole discretion determined" in subdivision (1).

Subd. 18, Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. Moran v. School Dist. No. 7, 350 F Supp 1180.

75-5936 to 75-5938. Repealed.

Repeal

Sections 75-5936 to 75-5938 (Secs. 65 to 67, Ch. 5, L. 1971), relating to the school census, were repealed by Sec. 15, Ch. 137, Laws 1973.

75-5941. Personal liability of trustees. The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "illegal" for "improper" in the third sentence.

CHAPTER 60—TEACHER CERTIFICATION

Section
75-6001. System of teacher certification—student teacher exception.

75-6001. System of teacher certification—student teacher exception. In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or the district has obtained an emergency authorization of employment from the state.

The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher, and shall, while acting as such student teacher, comply with all rules and regulations of the governing board of the district or public institution and the applicable provisions of section 75-6108 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973.

Amendments

The 1973 amendment added the second and third paragraphs.

75-6002. Board of education policies.

Cross-References

Board of public education to exercise powers and duties, sec. 75-5617 (1).

75-6010. Suspension, revocation and denial—appeals.

Cross-References

Board of public education to exercise powers and duties, sec. 75-5617 (1).

CHAPTER 61—EMPLOYMENT OF TEACHERS, SUPERINTENDENTS AND PRINCIPALS

Section

75-6105.1. Notification of nontenure teacher re-election.
75-6112. Appointment and dismissal of district superintendent or county high school principal.
75-6129. Policy to recognize heritage of American Indians.
75-6130. Definitions.
75-6131. Teachers of Indian children to be qualified in Indian studies—trustees and noncertified personnel.
75-6132. Other schools encouraged to comply with requirements on Indian studies.

75-6105.1. Notification of nontenure teacher re-election. The trustees shall provide written notice to all nontenure teachers who have been re-elected by the first day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in

the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

History: En. Sec. 1, Ch. 324, L. 1973.

Title of Act

An act providing for notification of nontenure teachers regarding their election or termination for the following year.

75-6112. Appointment and dismissal of district superintendent or county high school principal. The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees, and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts, in the name of the districts, and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than three (3) years and, after the second successive contract, the contract shall be deemed to be renewed for a further term of one (1) year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than the first day of February of the last year of such contract.

Whenever a joint board of trustees employs a person as the district superintendent, the elementary district and the county high school shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not

compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973.

Amendments

The 1973 amendment inserted "in writing" in the last sentence of the third paragraph.

75-6129. Policy to recognize heritage of American Indians. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of this act, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: En. Sec. 1, Ch. 464, L. 1973.

Title of Act.

An act requiring American Indian studies to be part of the educational background of public school teaching personnel employed on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, and encouraging American Indian studies as part of the educational background of all school personnel employed in the state.

75-6130. Definitions. (1) As used in this act, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in this act, "instruction" means

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) in-service training developed by the superintendent of public instruction in co-operation with educators of Indian descent and made available to school districts; or

(c) in-service training provided by a local board of trustees, which is developed and conducted in co-operation with local Indian people.

History: En. Sec. 2, Ch. 464, L. 1973.

75-6131. Teachers of Indian children to be qualified in Indian studies—trustees and noncertified personnel. (1) By July 1, 1979, all boards of trustees for elementary and secondary public school districts on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, shall employ only those certified personnel who have satisfied the requirements for instruction in American Indian studies as defined in section 2 [75-6130] of this act.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are

encouraged to satisfy the requirements for instruction in American Indian studies as defined in section 2 [75-6130] of this act.

History: En. Sec. 3, Ch. 464, L. 1973.

75-6132. Other schools encouraged to comply with requirements on Indian studies. Boards of trustees for all public school districts other than those defined in section 3 [75-6131] above and governing authorities for all nonpublic schools in Montana are encouraged to comply with the provisions and intent of this act.

History: En. Sec. 4, Ch. 464, L. 1973.

CHAPTER 62—TEACHERS' RETIREMENT SYSTEM

Section
75-6203. Retirement board.
75-6204. Per diem and expenses.
75-6206. Financial administration of moneys.
75-6207. Method of financing.
75-6208. Benefits.
75-6212. Membership application and creditable service.
75-6213. Creditable service for out-of-state employment, employment while on leave, for active service in the armed forces of the United States and the American red cross or merchant marine, and before September, 1937.
75-6219. Establishment of a tax-deferred annuity program.

75-6203. Retirement board. The governing board of the Teachers' Retirement System of the State of Montana shall be:

(1) to (3). * * * [Same as parent volume.]

Each appointed member of the governing board shall be appointed by the governor to serve a term of four (4) years and until his successor has been appointed and qualified. When a vacancy occurs in the position of an appointed member of the governing board, the governor shall appoint a person to serve the unexpired term for such position.

The attorney general shall be the legal adviser of the governing board.

Each appointed member of the governing board shall take and subscribe to the oath prescribed by the state of Montana, and such oath shall be filed in the office of the secretary of state.

A majority of the members of the governing board shall constitute a quorum for the transaction of any business.

History: En. 75-6203 by Sec. 98, Ch. 5, L. 1971; amd. Sec. 30, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "section 1 of article XIX of the constitution of" before "the state of Montana" in the next to the last paragraph.

75-6204. Per diem and expenses. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive twenty-five dollars ($25) per day and his necessary and actual expenses incurred for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provi-

sions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973.

Amendments

The 1973 amendment increased the per diem rate specified in the first sentence from $20.00 to $25.00; and deleted a second sentence limiting each member's per diem to $300 per fiscal year.

75-6206. Financial administration of moneys. The retirement board shall be the trustees of all moneys collected for the retirement system and as such trustees they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and re-invested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) to (7). * * * [Same as parent volume.]

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973.

Amendments

The 1973 amendment substituted "board of investments" for "board of land commissioners" at the end of subdivision (1); and deleted "on the basis of the interest earnings of the retirement system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future" from the end of subdivision (2).

75-6207. Method of financing. The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(1). * * * [Same as parent volume.]

(a) Each employer shall deduct from the compensation of each active member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five and one-eighth per cent (5⅛%) of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered thirty-five (35) years of creditable service if such member elects not to contribute.

(b) to (d). * * * [Same as parent volume.]

(2) and (3). * * * [Same as parent volume.]

(a) Each employer shall pay into the pension accumulation fund an amount equal to five and one-fourth per cent (5¼%) of the earnable compensation of each member employed during the whole or part of the preceding payroll period.

(b) to (d). * * * [Same as parent volume.]

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(4) Expense fund. The expense fund shall be the fund to which shall be credited all moneys for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund from interest and other earnings realized on the moneys of the retirement system.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973.

Amendments

The 1973 amendment increased the contribution rate specified in subdivision (1)(a) from 5% to 5⅛%; increased the contribution rate specified in subdivision (3)(a) from 5⅛% to 5¼%; deleted references to the pension reserve fund following references to the annuity reserve fund in subdivisions (3)(e) and (3)(g); deleted "with the exception of those payable to members not entitled to prior service credit" after the reference to section 75-6218 in subdivision (3)(f); deleted subdivision (3)(h), providing for transfer on retirement of a member without a prior service certificate; deleted a subsection (4), relating to a pension reserve fund, for text of which see parent volume; renumbered subsection (5) as (4); deleted a subdivision (5)(a) requiring an annual payment of $1.00 per member for the expense fund; and made minor changes in style and phraseology.

75-6208. Benefits. The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

(1). * * * [Same as parent volume.]

(a) Any member who has completed five (5) years of creditable service, the last five (5) years of which shall have been in this state, and who has attained the age of sixty (60), or who has completed thirty-five (35) years of creditable service, may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) and (c). * * * [Same as parent volume.]

(2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance which shall consist of:

(a) A pension which, together with an annuity, shall provide a retirement allowance equal to one-half (½) of his average final compensation provided his creditable service is at least thirty-five (35) years, otherwise a pension together with his annuity of one-seventieth (1/70) of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has completed thirty-five (35) years of service shall be twenty-four hundred

dollars ($2,400) and the minimum retirement allowance for a member whose service is less than thirty-five (35) years shall be based on the proportionate amount of twenty-four hundred dollars ($2,400) that his service bears to thirty-five (35) years of service.

(c) Every beneficiary receiving a retirement allowance on July 1, 1971 shall be entitled to an increase in his monthly retirement allowance of one dollar ($1) for each year of creditable service at the time of retirement up to a maximum of thirty-five dollars ($35), or an increase in his retirement allowance of ten per cent (10%), whichever is larger, beginning July 1, 1973.

(d) Every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance on July 1, 1973 of one-fourth of one per cent (.25%) multiplied by the number of months he has been retired since July 1, 1971, but if he is eligible under subsections (2)(a), (2)(b) or (2)(c) above, and the benefit thereunder is larger than the increased retirement allowance prescribed herein, this provision shall not apply.

(e) On July 1, 1974 and on July 1, 1975, every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance of one-fourth of one per cent (.25%) multiplied by the number of months he has been retired during the preceding fiscal year.

(f) Any member who has completed five (5) years of creditable service, the last five years of which shall have been in this state, and who has attained the age of fifty-five (55) may retire from service and be eligible to an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (a) through (f) above, with the further provision that such allowance will be reduced by one half of one per cent (.5%) multiplied by the number of months which the retirement date precedes the date on which he would have retired had he attained sixty (60) years of age or had he completed thirty-five (35) years of creditable service.

(g) In the event of death of a member after retirement, a death benefit of five hundred dollars ($500) will be payable to his designated beneficiary.

(h) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3). * * * [Same as parent volume.]

(a) to (e). * * * [Same as parent volume.]

(4). * * * [Same as parent volume.]

(a). * * * [Same as parent volume.]

(b) A pension which together with his annuity, shall provide a total retirement allowance equal to one-seventieth (1/70) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter (¼) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter (¼) of his

average final compensation, provided, however, that no such allowance shall exceed one-seventieth (1/70) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(c). * * * [Same as parent volume.]

(5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:

(a). * * * [Same as parent volume.]

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 may withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 may withdraw his accumulated contributions.

(6). * * * [Same as parent volume.]

(a). * * * [Same as parent volume.]

(b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections (2)(a) through (2)(h) assuming the member had elected option A as prescribed in subsection (7)(a) below. In addition, if the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, a lump sum death benefit of $500 will be payable to his designated beneficiary.

(c). * * * [Same as parent volume.]

(7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. This benefit shall be referred to as the normal form of retirement allowance. In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death continue to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement with the provision that:

(a) Option A. The optional allowance will continue to the member during his lifetime and upon his death, continue throughout the lifetime of his designated beneficiary; or

(b) Option B. The optional allowance will continue throughout his lifetime and upon his death, one-half (½) of his optional allowance will be continued throughout the lifetime of his designated beneficiary; or

(c) Option C. The optional benefit will continue throughout his lifetime and upon his death, two-thirds (2/3) of the optional allowance shall be continued throughout the lifetime of his designated beneficiary; or

(d) Option D. The optional allowance shall continue while both the member and his designated beneficiary are living and upon the death of either, one-half (½) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(e) Option E. The optional allowance will be payable while both the member and his designated beneficiary are living and upon the death of either, two-thirds (2/3) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(f) Option F. Some other benefit or benefits shall be paid either to the member or his surviving designated beneficiary. The provisions of this retirement allowance shall be approved by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973.

Amendments

The 1973 amendment inserted "or who has completed thirty-five (35) years of creditable service" in subdivision (1)(a); completely rewrote the lettered subdivisions in subsection (2); deleted "ninety per cent (90%) of" before "one-seventieth" in two places in subdivision (4)(b); substituted "may withdraw" for "shall withdraw" in the preliminary paragraph of subsection (5) and in subdivisions (5)(b) and (5)(c); deleted a paragraph following subdivision (5)(c); completely rewrote the second sentence and added the third sentence of subdivision (6)(b); and completely rewrote that portion of subsection (7) following the first sentence. For prior provisions, see parent volume.

75-6212. Membership application and creditable service. Whenever a person becomes eligible for membership in the retirement system, he shall apply for such membership on the application form prescribed by the retirement board. The creditable service of a member shall begin on the receipt of the membership application by the retirement board and shall accumulate to the member's credit on the basis of the retirement board's policy governing creditable service.

The creditable service of any member shall include the following:

(1) and (2). * * * [Same as parent volume.]

(3) any service awarded by a prior service certificate issued under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939 and their subsequent amendments, or under the provisions of section 75-6213; plus

(4) the creditable service established by the retirement board under the provisions of this section shall be final and conclusive for the purposes of the retirement system unless, at any time, the retirement board discovers an error or fraud in the establishment of the creditable service, in which case the retirement board shall re-establish the creditable service; plus

(5) any service awarded for employment while on leave under section 75-6213.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973.

Amendments

The 1973 amendment designated the former final paragraph as paragraph (4); and added paragraph (5).

75-6213. Creditable service for out-of-state employment, employment while on leave, for active service in the armed forces of the United States and the American red cross or merchant marine, and before September, 1937. Any person applying for membership also may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this title if such service were performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than five (5) years, if he contributes to the retirement system an amount equal to five per cent (5%) of his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contributions may be a lump-sum payment or in installments as agreed between the person and the retirement board; and

(1) Any person applying for membership also may apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon completing five (5) years of active membership in Montana subsequent to his return, provided his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board but for not more than two (2) years, if he contributes to the retirement system an amount equal to ten and three-eighths per cent (10 3/8%) of his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; and

(2) Any person applying for membership also may apply for creditable service in the retirement system for active service in the armed forces of the United States which includes the army, navy, marine corps, air force and coast guard or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than two (2) years, if he contributes to the retirement system an amount equal to ten and three-eighths per cent (10 3/8%) of his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of five (5) years

of membership service in Montana. The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; however

(3) In no event will the total creditable service for out-of-state teaching, employment while on leave, or while on active service in the armed forces of the United States or the American red cross or merchant marine exceed five (5) years.

Whenever a member is retiring with at least five (5) years of creditable service and he has been an active member for at least five (5) consecutive school fiscal years, he may request creditable service for any employment service he rendered prior to the first day of September, nineteen hundred and thirty-seven (1937) for which he has not received a prior service certificate. In order to receive such creditable service, he shall apply for it and provide certification of such service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973.

Amendments

The 1973 amendment substituted "his first full year's teaching salary earned in Montana after his out-of-state service" in the latter part of the second sentence of the first paragraph for "his first year's salary earned in Montana"; inserted numbered paragraphs (1) to (3); and reduced the creditable service requirement stated at the beginning of the final paragraph from ten to five years.

75-6219. Establishment of a tax-deferred annuity program. The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403 (b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973.

Title of Act

An act to amend section 75-6204, R. C. M. 1947, to increase pay to members of the teachers' retirement board and remove restrictions on maximum per diem pay; amending sections 75-6206 and 75-6207, R. C. M. 1947, to change certain methods of funding and disbursing from the various teachers' retirement system funds; amending section 75-6208, R. C. M. 1947, to provide additions and changes in various benefits to members of the teachers' retirement system; amending section 75-6212, R. C. M. 1947, to allow for service credits for employment while a teacher is on leave; amending section 75-6213, R. C. M. 1947, to define basis of cost for out-of-state service credit; changing credit for out-of-state teaching and prior military service and decreasing membership requirements of the teachers' retirement system; adding a new section to be numbered 75-6219 providing for a tax deferred annuity program sponsored by the teachers' retirement system.

CHAPTER 63—COMPULSORY ATTENDANCE AND TUITION AGREEMENTS

Section
75-6303. Compulsory enrollment and excuses.
75-6323. Extracurricular fund for pupil functions.

75-6303. Compulsory enrollment and excuses. Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal

year and has not yet reached his sixteenth birthday and who has not completed the work of the eighth (8th) grade, shall cause the child to be instructed in the English language and in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable. Such parent, guardian or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless:

(1) to (5). * * * [Same as parent volume.]

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "and" for "or" after "sixteenth birthday" in the first sentence.

75-6310. Duties and sanctions.

Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. Moran v. School Dist. No. 7, 350 F Supp 1180.

75-6323. Extracurricular fund for pupil functions. The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

An accounting system for the extracurricular fund recommended by the state examiner shall be implemented by the trustees. Such accounting system shall provide for:

(1) and (2). * * * [Same as parent volume.]

The trustees of the district shall cause an annual audit of the extracurricular fund by retaining the state examiner to perform such audit. A fee of eighty dollars ($80) per day per man shall be paid from the extracurricular fund or district moneys to the state examiner for deposit in the state treasury to the credit of the general fund.

The auditor shall file a certified copy of the audit report with the county superintendent. The county superintendent shall publish notice in a newspaper of the district or county of the filing and the fact that it is open to public inspection.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973.

Amendments

The 1973 amendment deleted "a qualified accountant or" following "by retaining" in the first sentence of the third paragraph; deleted the second sentence of the third paragraph; and deleted "If the state examiner performs the audit," from the beginning of the present second sentence of the third paragraph.

CHAPTER 64—SCHOOL ELECTIONS

Section
75-6410. Qualifications of elector.
75-6412. Elector challenges.

75-6406. Conditions under which school election called.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-6410. Qualifications of elector. Every person is entitled to vote at school elections if he has the following qualifications:

(1) He has registered to vote with the county registrar as a resident in the school district in which he resides and proposes to vote in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in section 75-6413;

(2) He is eighteen (18) years of age or older;

(3) He has been a resident of Montana for at least thirty (30) days; and

(4). * * * [Same as parent volume.]

No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

No person adjudicated to be of unsound mind has the right to vote unless he has been restored to capacity as provided by law.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 91, and once by Ch. 100. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 91, Laws of 1973, deleted "Except as provided in section 75-6411" from the beginning of the section; and inserted "as a resident in the school district in which he resides and proposes to vote" in subdivision (1).

Chapter 100, Laws of 1973, substituted new subdivisions (2) and (3) for subdivisions reading "(2) He shall be of a minimum age for voting provided by the constitution of the state of Montana; (3) He has met the residency requirement for voting as provided by the constitution of the state of Montana"; substituted "while he is serving a sentence in a penal institution" at the end of the next to last paragraph for "unless he has been pardoned"; and substituted "to be of unsound mind" in the final paragraph for "insane."

75-6410.1. Repealed.

Repeal

Section 75-6410.1 (Sec. 1, Ch. 83, L. 1971), relating to qualifications of voters on school tax questions, was repealed by Sec. 58, Ch. 100, Laws 1973. Chapter 391, Laws of 1973, purported to amend this section, but such amendment was void under the rule in section 43-515.

75-6412. Elector challenges. An elector may challenge the qualifications of another elector under the provisions of section 23-3015. Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in section 23-3611, R.C.M., 1947. Such challenge shall be determined in the same

manner, using the same oath as provided in chapter 36 of Title 23, R.C.M., 1947.

Any person who shall have been challenged under any of the provisions of this section and who shall swear or affirm falsely before any school election judge shall be guilty of perjury and shall be punished accordingly.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973.

Amendments

The 1973 amendment inserted a new first sentence at the beginning of the section.

CHAPTER 65—SCHOOL DISTRICT ORGANIZATION AND REORGANIZATION

Section
75-6503. District classification.
75-6508. Elementary district annexation.
75-6517. Limitations for creation of new elementary district.
75-6532. Cash disposition when district ceases to exist.
75-6534. Cash disposition when new elementary district created.

75-6503. District classification. Each elementary district shall have a classification of:

(1) and (2). * * * [Same as parent volume.]

(3) third class, if it has a population of less than one thousand (1,000). The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district.

The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every five (5) years.

Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

The classification of a high school district shall be the same as the classification of the elementary district where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly, and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed

in section 75-5905 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted "or; if the county superintendent deems it more equitable, he shall multiply by three (3) the approved number of school census children from the last completed census report of the district who are six (6) years of age or older but who have not reached their twenty-first (21) birthday" from the end of the sentence following clause (3).

75-6508. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when one of the conditions of section 75-6507 is met in accordance with the following procedure:

(1) to (6). * * * [Same as parent volume.]

History: En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973.

Amendments

The 1973 amendment inserted "when one of the conditions of section 75-6507 is met" in the latter part of the preliminary clause.

75-6517. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) and (2). * * * [Same as parent volume.]

(3) the ANB in any of the existing districts is not reduced to less than fifteen (15).

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "the ANB" at the beginning of subdivision (3) for "the number of school census children between the ages of six (6) and sixteen (16) years according to the last complete district census reports."

75-6532. Cash disposition when district ceases to exist. Whenever a district shall cease to exist in any manner prescribed in this title except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) and (2). * * * [Same as parent volume.]

When the territory is assumed by more than one (1) district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

(3). * * * [Same as parent volume.]

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "chil-

dren attending school and residing" for "census children residing" in the latter part of the second paragraph of subdivision (2).

75-6534. Cash disposition when new elementary district created. Whenever a new district is created, under the provisions of section 75-6518, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated a school for one (1) month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "school children" for "school census children" in two places near the end of the first sentence.

CHAPTER 66—OPENING AND CLOSING OF SCHOOLS

Section
75-6608. School isolation.

75-6608. School isolation. The trustees of any district operating an elementary school of less than ten (10) ANB or a high school of less than twenty-five (25) ANB shall annually apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by the first day of May each year. Such application shall include:

(1) to (3). * * * [Same as parent volume.]

The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before the fifteenth (15th) day of May. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before the first day of June. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school

shall be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973.

Amendments

The 1973 amendment inserted "annually" in the first sentence of the first paragraph; substituted "May" for "June" at the end of the first sentence of the second paragraph; substituted "criteria established by the superintendent of public instruction" for "existence of unusual obstacles to travel or the unusual distance of the nearest open school having room and facilities for the pupils of such school" in the second sentence of the second paragraph; deleted "because of conditions other than obstacles to travel or the unusual distance to the nearest open school having available room" following "approved" in the first sentence of the third paragraph; substituted "submit" for "review" following "county superintendent shall" in the first sentence of the third paragraph; deleted "and approve or disapprove it. If the county superintendent approves the isolated classification, he shall send the application indicating his approval and the budget board's approval" in the middle of the second paragraph following "such application"; substituted "first day" for "fourth Monday" at the end of the first sentence of the third paragraph; added the clause following "classification" to the end of the second sentence of the third paragraph; and added the third sentence of the third paragraph.

CHAPTER 67—BUDGET SYSTEM

Section
75-6711. Statement of district, cities' and towns' valuations.

75-6711. Statement of district, cities' and towns' valuations. By the second Monday of July, the department of revenue or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of section 84-505, R.C.M., 1947, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities or towns, as these valuations appear in such completed assessment book.

The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of section 84-4006, R.C.M., 1947, prepare a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

In the case of a joint school district, the department of revenue or its agent and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county

commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 4, L. 1971; amd. Sec. 51, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent in" for "county assessor of" throughout the section in order to implement article VIII, section 3 of the 1972 constitution; and substituted "tax appeal board" for "board of equalization" in the second paragraph in order to implement article VIII, section 7 of the 1972 constitution.

CHAPTER 68—FINANCIAL ADMINISTRATION

Section
75-6805. Duties of county treasurer.
75-6806. Duties of trustees.
75-6808. Pecuniary interests, letting contracts and calling for bids, under certain circumstances.
75-6808.1. Prohibition on division of contracts to circumvent bid requirement.
75-6809. Entering appropriations on accounting records of county treasurer.
75-6809.1. Documentation of expenditures.
75-6810. Procedure for issuance of warrants.
75-6811. Recording and payment of warrants by county treasurer.
75-6811.1. Cancellation of outstanding warrants—duplication.
75-6812. Transfer among appropriation items of a fund.

75-6805. Duties of county treasurer. The county treasurer of each county shall:

(1) and (2). * * * [Same as parent volume.]

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) to (10). * * * [Same as parent volume.]

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973.

Amendments

The 1973 amendment deleted "detailed" before "accounting" in subdivisions (3) and (4); and substituted "for" for "by budget appropriation item within" before "each budgeted fund" in subdivision (3).

75-6806. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1). * * * [Same as parent volume.]

(2) authorize all expenditures of district moneys, and cause warrants to be issued for the payment of lawful obligations;

(3) and (4). * * * [Same as parent volume.]

(5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal

reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated;

(6) to (8). * * * [Same as parent volume.]

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137 and once by Ch. 366. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, deleted from subdivision (5) a final sentence reading: "Any elementary district that fails to submit the annual report by the time required shall not be entitled to receive any apportionment of the state interest and income moneys and such forfeit in money shall be apportioned to the other elementary districts of the county."

Chapter 366, Laws of 1973, deleted "excepting payments under employee contracts" from the beginning of subdivision (2); deleted "by the written approval of claims for such expenditures" following "district moneys" in subdivision (2); and substituted "lawful obligations" for "approved claims and payments under employee contracts" at the end of subdivision (2).

75-6807. Examination of district accounting records.

Cross-References

State examiner's functions transferred to department of intergovernmental relations, sec. 82A-903 (3) (a).

75-6808. Pecuniary interests, letting contracts and calling for bids, under certain circumstances. It shall be unlawful for any trustee to (1) have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for warming, ventilating, furnishing, or repairing the same, or (2) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools, or (3) be employed in any capacity by the school district of which he is trustee.

Whenever the estimated cost of any building, furnishing, repairing or other work for the benefit of the district, or purchasing of supplies for the district, exceeds the sum of four thousand dollars ($4,000.00), the work done, or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before consideration of bids. Any contract not let pursuant to this section shall be void.

In all cases where bidding is required, the trustees shall award the contract to the lowest responsible bidder except that the trustees shall have the right to reject any or all bids.

With regard to contracting for work or supplies, the board of trustees of a community college district shall be subject to the provisions of section 75-8118.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973.

Amendments

The 1973 amendment completely rewrote and consolidated into one paragraph the former second paragraph and numbered paragraphs (1) to (3). For prior version, see parent volume.

75-6808.1. Prohibition on division of contracts to circumvent bid requirement. Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device. This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time, but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973.

Title of Act

An act to amend section 75-6808, R. C. M. 1947, to allow all classes of school districts to contract without letting bids for less than four thousand dollars ($4,000).

75-6809. Entering appropriations on accounting records of county treasurer. When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973.

Amendments

The 1973 amendment substituted "the fund" for "each item" near the end of the first paragraph; substituted "increase the amount" for "increase the item appropriations" in the middle of the second paragraph; and deleted "budget appropriations for each item of each" following "amount of the emergency" near the end of the second paragraph.

75-6809.1. Documentation of expenditures. The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(1) payee signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district or

(2) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973.

Title of Act

An act deleting the requirement that school districts have signed claims for an expenditure when adequate documentation is provided by the payee; and amending section 75-6806, R. C. M. 1947.

75-6810. Procedure for issuance of warrants. The trustees of each district shall issue all warrants and the warrants shall identify:

(1) to (3). * * * [Same as parent volume.]

Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of chapter 13 of Title 59, R.C.M., 1947, provided that the facsimile signature device shall not be available to the other countersigner of the warrant.

The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee; the duplicate shall be sent immediately to the county treasurer; and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original."

However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973.

Amendments

The 1973 amendment deleted "in triplicate" following "all warrants" in the preliminary clause; and inserted the first and second sentences and "When the warrants are issued in triplicate" at the beginning of the third sentence in the second paragraph after the numbered subdivisions.

75-6811. Recording and payment of warrants by county treasurer. Immediately after receiving a duplicate warrant or a warrant listing from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant or listing. The recording of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such budget, the county treasurer shall immediately notify the appropriate district of the expended condition of the budget and the district shall not issue another warrant against such fund that would overexpend the budget.

After receiving a duplicate warrant or warrant listing that contains a warrant which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Pay-

ment and Registration Refused, Insufficient Budget" and return the warrant to the person presenting it for payment.

Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973.

Amendments

The 1973 amendment inserted "or a warrant listing" following "duplicate warrant" and "or listing" at the end of the first sentence of the first paragraph; deleted "and appropriation item" following "under the fund" in the first sentence of the first paragraph; substituted "unexpended amount of a budgeted fund" for "unexpended appropriation amount of appropriation items of a budgeted fund" in the second sentence of the first paragraph; deleted "an appropriation item of" before "a budgeted fund" in the second paragraph; twice substituted "budget" for "appropriation item" in the second paragraph; substituted "fund that would overexpend the budget" for "appropriation item until its budgeted amount has been increased" at the end of the second paragraph; inserted "or a warrant listing that contains a warrant" near the beginning of the third paragraph; deleted "an original or revised amount of an appropriation item" following "unexpended balance of" in the first sentence of the third paragraph; deleted "an appropriation item" following "the overdraft" near the beginning of the second sentence of the third paragraph; deleted "original" prior to "warrant for payment" in the second sentence of the third paragraph; substituted " 'Budget' " for " 'Appropriation' " near the end of the third paragraph; and deleted "of registration" at the end of the third paragraph.

75-6811.1. Cancellation of outstanding warrants—duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least one (1) year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by section 93-2603 has elapsed. When a warrant has been canceled and the obligation has not terminated under section 93-2603, the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973.

Title of Act

An act to allow school districts to stop payment of issued warrants one (1) year after the date of issue.

75-6812. Transfer among appropriation items of a fund. Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973.

Amendments

The 1973 amendment substituted "enter

the authorized transfers upon the permanent records of the district" for "immediately notify the county treasurer in writing of any transfer between appropriation items and the county treasurer shall enter such transfer on his accounting records" at the end of the second paragraph.

CHAPTER 69—STATE EQUALIZATION AID TO PUBLIC SCHOOLS

Section
75-6902. Definition and calculation of average number belonging (ANB).
75-6903. Circumstances under which the regular average number belonging may be increased.
75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.
75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools.
75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing.
75-6907. Definition of interest and income moneys.
75-6908. Distribution of interest and income moneys by superintendent of public instruction.
75-6912. Basic county tax and other revenues for county equalization of elementary district foundation program.
75-6913. Basic special levy and other revenues for county equalization of high school district foundation program.
75-6915. Formula for apportionment of county equalization moneys.
75-6916. Definition of and revenue for state equalization aid.
75-6917. Purpose of state equalization aid and duties of the board of public education for distribution.
75-6918. Duties of the superintendent of public instruction for state equalization aid distribution.
75-6921. Additional state levy for state deficiency.
75-6922. Permissive levy.
75-6923. Additional levy for general fund and election for authorization to impose.
75-6927. Proration and calculation of foundation program for a joint district.

75-6902. Definition and calculation of average number belonging (ANB). The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half (½) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half (½) of a day attended or absent as the case may be. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) to (3). * * * [Same as parent volume.]

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973.

Amendments

The 1973 amendment inserted the fourth sentence in the first paragraph; and deleted a final paragraph permitting the inclusion of six-year-old kindergarten pupils in computing ANB.

75-6903. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

(1) to (5). * * * [Same as parent volume.]

(6) For the initial year of operation of a program established under section 75-7507 (1), the ANB to be used for budget purposes is the same as one-half (½) the number of five (5) year old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census, or as determined by some other procedure approved by the superintendent of public instruction.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973.

Amendments

The 1973 amendment added subsection (6).

Effective Date

Section 5 of Ch. 345, Laws 1973 read "This act is effective on July 1, 1974."

75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in subsection (5) of section 75-6903, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The average number belonging used for the establishment of the foundation program for the current year and for each year of the immediately preceding three (3) years shall be used to calculate the percentage increase or decrease in average number belonging for the current year's foundation program over the immediately preceding year, and similarly calculate the percentage increase or decrease in average number belonging for each of the two preceding years. The three (3) annual percentage increases or decreases shall be averaged to obtain the average annual percentage increase or decrease in average number belonging.

(2) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by one hundred eighty (180). The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(3) and (4). * * * [Same as parent volume.]

(5) The budget board shall review the application to determine if the district is eligible for an increase in its foundation program. The budget board may accept, reject, or adjust the district's estimate of the ensuing year's average number belonging. After approving an estimate, the budget board shall:

(a). * * * [Same as parent volume.]

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (7) if the increase in subsection (5) (a) above is at least twice the average annual percentage increase as provided in subsection (1) above or six per cent (6%) whichever is larger.

(6) and (7). * * * [Same as parent volume.]

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973.

Amendments

The 1973 amendment deleted "To determine if a district is eligible for an increased foundation program due to an unusual enrollment increase," from the beginning of subsection (1); deleted "When a district is eligible under subsection (1)," from the beginning of subsection (2); deleted "as provided in subsection (1) above and to determine if the estimate of the anticipated increase in average number belonging is substantiated" from the first sentence in subsection (5); and added "or six per cent (6%) whichever is larger" to the end of paragraph (b) of subsection (5).

75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1973-74

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents ($7,806.50), if said school is approved as an isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents ($7,806.50) plus two hundred seventy-six dollars and fifty cents ($276.50) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand two hundred eighty-six dollars ($10,286) plus three hundred sixty-four dollars and fifty cents ($364.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be seventeen thousand five hundred eighty-six dollars ($17,586) plus two hundred fifty-two dollars and fifty cents ($252.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred forty-two dollars and fifty cents ($642.50) shall be decreased at the rate of forty-three cents ($.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred sixteen dollars and fifty cents ($616.50) shall be decreased at the rate of fifty-one cents ($.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed five hundred thirteen dollars and fifty cents ($513.50) for each pupil.

(6). * * * [Same as parent volume.]

High School Schedule for 1973-74

(7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-seven thousand five hundred ten dollars ($37,510).

(8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred sixty-two dollars and seventy-five cents ($1,562.75) shall be decreased at the rate of nine dollars seventy-five cents ($9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred six dollars and seventy-five cents ($1,406.75) shall be decreased at the rate of six dollars sixty cents ($6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand nine dollars and seventy-five cents ($1,009.75) shall be decreased at the rate of two dollars fifteen cents ($2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of seven hundred ninety-four dollars and seventy-five cents ($794.75) shall be decreased by forty-nine cents ($.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred forty-six dollars and seventy-five cents ($746.75) shall be decreased at the rate of thirteen cents ($.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred eight dollars and seventy-five cents ($708.75) per pupil.

(9). * * * [Same as parent volume.]

Elementary School Schedule for 1974-75 and Succeeding Years

(10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be eight thousand thirty-seven dollars ($8,037), if said school is approved as an isolated school.

(11) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be eight thousand thirty-seven dollars ($8,037) plus three hundred two dollars ($302) per pupil on the basis of the average number belonging over nine (9).

(12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand seven hundred forty-seven dollars ($10,747) plus three hundred ninety dollars ($390) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be eighteen thousand forty-seven dollars ($18,047) plus two hundred seventy-eight dollars ($278) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred sixty-eight dollars ($668) shall be decreased at the rate of forty-three cents ($.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred forty-two dollars ($642) shall be decreased at the rate of fifty-one cents ($.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed five hundred thirty-nine dollars ($539) for each pupil.

(15). * * * [Same as parent volume.]

High School Schedule for 1974-75 and Succeeding Years

(16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-eight thousand three hundred sixty-two dollars ($38,362).

(17) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred ninety-eight dollars and twenty-five cents ($1,598.25) shall be decreased at the rate of nine dollars seventy-five cents ($9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred forty-two dollars and twenty-five cents ($1,442.25) shall be decreased at the rate of six dollars sixty cents ($6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand forty-five dollars and twenty-five cents ($1,045.25) shall be decreased at the rate of two dollars fifteen cents ($2.15) for each additional pupil until the ANB shall have reached two hundred (200)

pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of eight hundred thirty dollars and twenty-five cents ($830.25) shall be decreased by forty-nine cents ($.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred eighty-two dollars and twenty-five cents ($782.25) shall be decreased at the rate of thirteen cents ($.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred forty-four dollars and twenty-five cents ($744.25) per pupil.

(18) and (19). * * * [Same as parent volume.]

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973.

Amendments

The 1973 amendment updated the schedules two years for each classification; and increased funding levels in each category; for prior funding levels see parent volume.

75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing. As used in this title, the term "foundation program" shall mean the minimum operating expenditures as established herein, that are sufficient to provide for the educational program of a school. It shall be financed by (1) county equalization moneys, (2) state equalization aid, and (3) when required, moneys from an additional county levy for a state deficiency. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund.

The dollar amount of the foundation program shall be eighty per cent (80%) of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in section 75-6905. The foundation program of an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school under the provisions of section 75-6608 shall be eighty per cent (80%) of the schedule amount but the county and state shall participate in financing one-half (½) of the foundation program and the district shall finance the remaining one-half (½) by a tax levied on the property of the district. When a school of nine (9) or fewer pupils is approved as isolated under the provisions of section 75-6608, the county and state shall participate in the financing of the total amount of the foundation program.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted from the first paragraph a third sentence reading: "In addition, the elementary school foundation programs shall be supported by interest and income moneys."

75-6907. Definition of interest and income moneys. As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by article X, section 5 of the 1972 Montana constitution:

(1) to (4). * * * [Same as parent volume.]

The remaining five per cent (5%) of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted the reference to the 1972 constitution in the preliminary paragraph for a reference to section 5, article XI of the 1889 constitution; and made a minor change in phraseology.

75-6908. Distribution of interest and income moneys by superintendent of public instruction. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year into the earmarked revenue fund for state equalization aid provided for by section 75-6916, R.C.M. 1947, by the last business day of February following the calendar year in which the moneys were received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "into the earmarked revenue fund for state equalization aid provided for by section 75-6916, R. C. M. 1947" for "to the credit of the account established by the state treasurer for such moneys"; and deleted four paragraphs relating to distribution of the interest and income moneys. For previous text, see parent volume.

75-6909 to 75-6911. Repealed.

Repeal

Sections 75-6909 to 75-6911 (Secs. 259 to 261, Ch. 5, L. 1971), relating to apportionment and distribution of interest and income moneys, were repealed by Sec. 15, Ch. 137, Laws 1973.

75-6912. Basic county tax and other revenues for county equalization of elementary district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic tax of twenty-five (25) mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (1) through (6) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county. If the basic levy of twenty-five (25) mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in section 75-6914 and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with subsection (1) of section 75-6805;

(1) to (6). * * * [Same as parent volume.]

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted "for the purposes of local and state foundation program support" for "unless a basic levy of less than twenty-five (25) mills is sufficient to finance the total amount of the foundation programs of all the elementary districts of the county" at the end of the first sentence; inserted the portion of the second sentence preceding the colon; substituted "the amount of revenue raised by this levy which is retained by the county" for "if a lesser levy will be sufficient" after "In order to determine" following the colon in the second sentence; substituted "If the basic levy of twenty-five (25) mills produces more than is required" at the beginning of the third sentence for "If a basic levy of less than twenty-five (25) mills is sufficient"; substituted the final part of the third sentence, beginning with "order the county treasurer to remit," for "fix a basic levy of such amount"; deleted from the first paragraph a final sentence prohibiting state equalization aid to elementary districts levying less than 25 mills; and inserted "the county's portion of" before "the levy" near the beginning of the second paragraph.

75-6913. Basic special levy and other revenues for county equalization of high school district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of fifteen (15) mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (1) and (2) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county. If the basic levy for fifteen (15) mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in section 75-6914, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with subsection (1) of section 75-6805:

(1) and (2). * * * [Same as parent volume.]

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted "for the purposes of local and state founda-

tion program support" for "unless a basic special levy for high schools of less than fifteen (15) mills is sufficient to finance the total amount of the foundation programs of all the high school districts of the county" at the end of the first sentence; inserted the portion of the second sentence preceding the colon; substituted "the amount of revenue raised by this levy which is retained by the county" for "if a lesser levy will be sufficient" shortly after the colon in the second sentence; substituted "If the basic levy for fifteen (15) mills produces more revenue than is required" at the beginning of the third sentence for "If a basic special levy for high schools of less than fifteen (15) mills is sufficient"; substituted the final portion of the third sentence, beginning with "order the county treasurer to remit," for "fix a basic special levy for high schools of such amount"; deleted from the first paragraph a final sentence prohibiting state equalization aid to high school districts levying less than 15 mills; and inserted "the county's portion of" before "the levy" near the beginning of the second paragraph.

75-6915. Formula for apportionment of county equalization moneys. After making such deductions prescribed in section 75-6914, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(1) Determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts.

(2) Multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1) above to determine the portion of the county equalization moneys available to each public elementary district.

The above procedure shall also be applied for public secondary districts.

No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of subsection (5) of section 75-6912 or subsection (1) of section 75-6913.

The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137, and once by Ch. 255. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, inserted "public" before "elementary district" throughout the section; substituted "public secondary districts" for "high school districts" throughout the section; deleted headings dividing numbered paragraphs applicable to elementary schools and to high schools; deleted former paragraphs (1) to (5) applicable to elementary schools; redesignated former paragraphs (6) and (7) as (1) and (2); made newly redesignated paragraphs (1) and (2) applicable to elementary districts by substituting "public elementary district" for "high school district" throughout the paragraphs; inserted a new paragraph immediately after the numbered paragraphs; deleted "shall constitute the second source of revenue in calculating the financing of the elementary district foundation program and" before "shall constitute the first source of revenue" in the first sentence of the final paragraph; and inserted "elementary and" before "secondary district foundation program" at the end of the first sentence of the final paragraph.

Chapter 255, Laws of 1973, deleted from what is now the second paragraph after the numbered subdivisions a first sentence reading: "No district shall be deprived of its needful share of the county moneys apportioned under this section by reason of it being nonaccredited"; and made minor changes in phraseology.

75-6916. Definition of and revenue for state equalization aid. The following shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state:

(1) twenty-five per cent (25%) of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947,

(2) twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947,

(3) one-half (1/2) of the moneys received from the treasurer of the United States as the state's shares of oil and gas royalties under the Act of Congress of February 25, 1920,

(4) interest and income moneys described in sections 75-6907 and 75-6908, R.C.M. 1947, and

(5) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to sections 75-6912 and 75-6913 shall be paid into the same earmarked revenue fund.

As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137 and once by Ch. 355. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, set off in numbered paragraphs the items to be paid into the fund; inserted a new paragraph

(4); and made minor changes in phraseology.

Chapter 355, Laws of 1973, inserted a new sentence which the compiler has designated as paragraph (5).

75-6917. Purpose of state equalization aid and duties of the board of public education for distribution. The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(1) and (2). * * * [Same as parent volume.]

(3) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of intergovernmental relations.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973.

Compiler's Notes

This section was amended three times in 1973, once by Ch. 166, once by Ch. 345 and once by Ch. 346. None of the amendatory acts mentioned or incorporated the changes made by the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all amendments.

Amendments.

Chapter 166, Laws of 1973, corrected the name of the board of public education throughout the section; and deleted "in the months of December and April of each school fiscal year," from the beginning of subdivision (3).

Chapter 345, Laws of 1973, deleted "kindergarten" following "adult education program" near the end of the first paragraph.

Chapter 346, Laws of 1973, added the last paragraph.

75-6918. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1). * * * [Same as parent volume.]

(2) recommending to the board of public education the annual entitlement of all districts to state equalization aid to enable the board of public education to order the distribution of state equalization aid;

(3) distributing by state warrant the state equalization aid for each district entitled to such aid, to the county treasurer of the county where

the district is located, in accordance with the distribution ordered by the board of public education;

(4). * * * [Same as parent volume.]

(5) reporting to the board of public education the estimated amount which will be available for state equalization aid; and

(6). * * * [Same as parent volume.]

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board throughout the section; and deleted "at its meeting in July and December of each year" and "for the next succeeding six month period, commencing on July 1 and January 1" from subsection (5).

75-6921. Additional state levy for state deficiency. If the estimated state equalization level made under the provisions of section 75-6920 is less than one hundred per cent (100%), it shall be the duty of the director of the department of revenue to levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the state as shall be required to complete the financing of the foundation programs of all elementary districts or all high school districts of the state.

The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The superintendent of public instruction shall apportion the proceeds of the mill levies to the elementary districts of the state or the high school districts of the state, whichever the case may be, on the following basis:

(1) Determine the total amount required from this source of revenue by the several elementary or high school districts of the state.

(2) to (4). * * * [Same as parent volume.]

When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the state, whichever the case may be, the excess amount of moneys shall be retained by the state for reduction of the ensuing year's additional state levy for elementary schools or high schools or, if there is no additional state levy under this section the excess may be transferred to the state equalization aid account for the reduction of the legislative appropriation.

The apportionment of state moneys under this section shall be known as the "additional state levy for state deficiency" and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

The superintendent of public instruction shall compute the budgeted requirement for this source of revenue for each district and shall supply the total state requirements for the elementary district foundation programs and the high school district foundation programs to the director of the department of revenue on the second Monday of August.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted references to the state, the director of the

department of revenue, the state treasurer and the superintendent of public instruction, respectively, throughout the section for references to the county, the county commissioners, the county treasurer and the county superintendent; deleted "As provided in section 75-6805" from the beginning of the second paragraph; added to the first paragraph after the numbered clauses the final clause, beginning with "or, if there is no additional state levy"; deleted "and for the county" after "source of revenue for each district" in the final paragraph; substituted "total state requirements" for "county requirements" in the final paragraph; and deleted "in accordance with section 75-6717" from the end of the section.

75-6922. Permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedule in section 75-6905, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. The financing of such general fund budget amount shall be known as the "permissive levy," and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in section 75-6926, supplemented with revenue from a levy on all the taxable property in the state.

(2) The district levies to be set for the purpose of funding the per missive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding nine (9) mills on all the taxable property in the district for the purpose of funding the permissive levy requirements of the district. If the amount of revenue raised by this levy is not sufficient to fully fund the district's permissive levy requirements, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding six (6) mills on all taxable property in the district for the purpose of funding the permissive levy requirements of the district. If the amount of revenue raised by this levy is not sufficient to fully fund the district's permissive levy requirements, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(3) The director of the department of revenue shall annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency of the elementary and high school districts of the state. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If sufficient revenue is not collected to completely cover the

permissive levy requirement of the districts, each district will receive the same percentage of its total requirement. Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973.

Amendments

The 1973 amendment designated the former section as subsection (1); added "supplemented with revenue from a levy on all of the taxable property in the state" at the end of subsection (1); and added subsections (2) and (3).

75-6923. Additional levy for general fund and election for authorization to impose. The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

(1) to (4). * * * [Same as parent volume.]

However, the trustees may not adopt a total general fund budget which exceeds one hundred seven per cent (107%) of the general fund budget for the preceding year, unless such budget is adopted under conditions as provided in sections 75-6723 through 75-6730, or under the following conditions:

(a) new programs which are approved under 75-6903 or existing programs which are expanded as a result of ANB increases approved under 75-6903;

(b) federal programs which are continued with local funds if federal funds are withdrawn or withheld.

In subsection (2)(a), above, the budget may exceed 107% of the preceding year's budget by a dollar amount equal to the increase in the maximum budget without a vote resulting from the introduction of the new or expanded program and in subsection (2)(b), above, by a dollar amount not to exceed the amount received from federal sources for the preceding year. Nothing in this act shall prevent a school district from adopting a budget at least as large as the maximum budget without a vote as provided in section 75-6905.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount

to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973.

Amendments.

The 1973 amendment inserted the two paragraphs (including clauses (a) and (b)) following subdivision (4).

75-6927. Proration and calculation of foundation program for a joint district. In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:

(1) to (3). * * * [Same as parent volume.]

The portion of a joint district foundation program for each county, as determined in subsection (3) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted from the final paragraph a second sentence reading: "The interest and income moneys available to joint elementary districts shall be considered as prorated to the several counties on the basis of each child's county of residence."

CHAPTER 70—SCHOOL BUSES AND TRANSPORTATION OF PUPILS

Section

75-7002. School bus definition and identification requirements.
75-7004. Duties of board of public education.

75-7005. Duties of the superintendent of public instruction.
75-7008. Duty of trustees to provide transportation—types of transportation—bus riding time limitation.
75-7013. Bid letting for contract bus—payments under transportation contract.
75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.

75-7002. School bus definition and identification requirements. A "school bus" shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency, and which complies with the bus standards established by the board of public education as determined by the Montana highway patrol's semiannual inspection of school buses and the superintendent of public instruction. Such bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency. Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least eight (8) inches in height. When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973.

Amendments

The 1973 amendment substituted a reference to the board of public education for a reference to the board of education in the first sentence; and substituted "semiannual inspection" for "annual inspection" near the end of the first sentence.

Cross-References

Highway patrol functions transferred, sec. 82A-1206.

75-7004. Duties of board of public education. The board of public education, by and with the advice of the chief of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the Motor Vehicle Code, to provide uniform standards and regulations for the design, construction and operation of school buses in the state of Montana. Such policies shall:

(1) to (5). * * * [Same as parent volume.]

(6) prescribe any other policies for the operation of school buses which are not inconsistent with the Motor Vehicle Code, the minimum standards adopted by the national commission on safety education for school bus operation, the highway safety standards, and the transportation provisions of this title.

(7). * * * [Same as parent volume.]

The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board near the beginning of the preliminary paragraph and near the beginning of the final paragraph; deleted "the transportation programs that are not inconsistent with" before "the transportation provisions" near the end of subdivision (6); and deleted from the final paragraph a first sentence reading, "The board of education shall promulgate

a schedule that establishes the basis for increasing the individual transportation rates due to isolation as provided in subsection (3) of section 75-7019.

75-7005. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) and (3). * * * [Same as parent volume.]

(4) prescribe rules and regulations for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education; and provide a degree of isolation chart to school district trustees to serve as a guide;

(5) to (7). * * * [Same as parent volume.]

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board in subdivisions (1), (4) and (8); and added "and provide a degree of isolation chart to school district trustees to serve as a guide" to the end of subdivision (4).

75-7008. Duty of trustees to provide transportation—types of transportation—bus riding time limitation. The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction. The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

The type of transportation provided by a district may be:

(1) and (2). * * * [Same as parent volume.]

When the parent or guardian of an elementary pupil consents to a trip of over one (1) hour, the trustees may require such eligible transportee to ride a school bus for more than one (1) hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973.

Amendments

The 1973 amendment inserted the fourth sentence in the first paragraph.

Effective Date

Section 2 of Ch. 245, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 9, 1973.

75-7013. Bid letting for contract bus—payments under transportation contract. Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(1) secure bids by publishing at least three (3) calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county during a period of twenty-one (21) days. The trustees shall let the contract to the lowest responsible bidder and the trustees shall have the right to reject any and all bids; or

(2) negotiate a new contract with the current school bus contractor provided the negotiated contract costs do not exceed by more than five per cent (5%) per year the basic costs of the previous year's contract and provided the duration of the negotiated contract is no longer than the duration of the previous contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least one week prior to the meeting.

The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of section 75-6808.

The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(1) to (3). * * * [Same as parent volume.]

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973.

Amendments

The 1973 amendment divided the first two sentences of the former first paragraph into the preliminary paragraph and its subsidiary paragraph (1); inserted new matter as the first paragraph (2); and made minor changes in style.

Effective Date

Section 2 of Ch. 362, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 19, 1973.

75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1). * * * [Same as parent volume.]

(2) When the parent or guardian provides the transportation conveyance from the eligible transportee's residence to an approved route of the school bus designated by the trustees for the transportation of such eligible transportee, the per diem rates prescribed in subsection (1) shall be used to determine the reimbursable amount for such transportation on the basis of the distance from the child's residence to an established bus route stop.

When the distance from the eligible transportee's residence to the approved bus route stop is not less than one and one-half (1½) miles but less than three (3) miles, the reimbursement rate shall be one-half (½) the rate prescribed in subsection (1)(a) above. No transportation reimbursement shall be paid to a parent or guardian when the distance from the child's residence is less than one and one-half (1½) miles from an established bus route stop.

(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The percentage increases of the per-day individual transportation rates prescribed in subsections (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred per cent (100%).

(4) to (6). * * * [Same as parent volume.]

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 169 and once by Ch. 416. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 169, Laws of 1973, substituted "an established bus route stop" for "such bus route" in the first sentence in subdivision (2); inserted "from the child's residence" following "distance" in the last sentence of subdivision (2); added "from established bus stop" to the end of that sentence; and made minor changes in style.

Chapter 416, Laws of 1973, deleted "The board of education shall promulgate a schedule that allows varying" from the beginning of the fifth sentence of subdivision (3).

CHAPTER 71—SCHOOL DISTRICT AND COUNTY SCHOOL BONDS

Section
75-7102. Definition of school district for bonding purposes.
75-7103. Trustees may issue bonds for certain purposes.
75-7104. Limitations on amount of bond issue.
75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds.
75-7116. Notice of bond election by separate purpose.

75-7102. Definition of school district for bonding purposes. For the purposes of indebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" shall mean any elementary district,

high school district, or community college district, except the following types of high schools recognized as high school districts without a bonding authority in section 75-6501:

(1) and (2). * * * [Same as parent volume.]

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973.

Amendments

The 1973 amendment inserted references to community college districts twice in the preliminary paragraph.

75-7103. Trustees may issue bonds for certain purposes. The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(1) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for, a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes including post-secondary vocational-technical centers in the school district;

(2) buying a school bus or buses;

(3) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(4) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(5) funding a judgment against the district.

Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the ninth grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 76 and once by Ch. 189. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 76, Laws of 1973, inserted "purchasing lands for, and/or obtaining a water supply for" and "or combination of said buildings" in subsection (1); deleted former subsections (2) and (3); renumbered former subsection (4) as (2) and added "or buses" to that subsection; and renumbered former subsections (5), (6) and (7) as (3), (4) and (5).

Chapter 189, Laws of 1973, inserted "including post-secondary vocational-technical centers" in subdivision (1).

Effective Date

Section 2 of Ch. 76, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

75-7104. Limitations on amount of bond issue. The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is five per cent (5%) of the assessed value of the taxable property therein as ascertained by the last completed

assessment for state, county, and school taxes previous to the incurring of such indebtedness. All bonds issued in excess of such amount shall be null and void.

When the total indebtedness of a school district has reached the five per cent (5%) limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973.

Amendments

Both 1973 amendments deleted from the first paragraph the former second sentence defining the words "value of taxable property therein."

75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds. School district bonds shall not be issued for a term longer than twenty (20) years except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than ten (10) years unless the unexpired term of the bonds to be refunded or redeemed is in excess of ten (10) years in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the school district on any interest payment date after one-half (½) of the term for which they were issued has expired and it shall be so stated on the face of the bonds. The interest shall not exceed seven per cent (7%) per annum and shall be payable semiannually.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973.

Amendments

The 1973 amendment substituted "after one-half (½) of the term for which they were issued has expired" in the second sentence for "five (5) years from the date of issue"; and made minor changes in phraseology.

75-7116. Notice of bond election by separate purpose. Any school district bond election shall be conducted in accordance with the school election provisions of this Title except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. ..... of ..... County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the ..... day of ....., A.D., 19....., an election of the registered electors of School District No. ..... of ..... County, state of Montana, will be held on the ..... day of ....., A.D., 19....., at ..... for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of

said school district in the amount of ..... dollars ($.....), bearing interest at a rate not more than seven per cent (7%) per annum, payable semiannually, for the purpose of ..... (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding ..... (state number) years.

The polls will be open from ..... o'clock .....m. and until ..... o'clock .....m. of the said day.

Dated and posted this ..... day of ....., A.D., 19.....

.....
Chairman of School District No.
..... of ..... County,
State of Montana

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973.

Amendments

The 1973 amendment deleted "who are taxpayers therein and whose names appear on the last completed assessment roll for state, county and school district taxes prior to the holding of such election," from the notice following "registered electors of School District No. ------ of ------ County, state of Montana."

CHAPTER 72—ELEMENTARY TUITION AND SPECIAL PURPOSE FUNDS

Section
75-7204. Retirement fund.
75-7214. Housing and dormitory fund.

75-7204. Retirement fund. The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall be calculated in accordance with section 68-603, R.C.M., 1947. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation.

The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(1) and (2). * * * [Same as parent volume.]

The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts and all high school districts of the county, including any prorated joint district levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district and high school district retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973.

Amendments

The 1973 amendment inserted "or who are covered by any federal social security system requiring employer contributions" in the first sentence of the first paragraph; added the fourth sentence to the first paragraph; deleted, immediately after paragraph (2), a paragraph providing for annual report to and levy by the county commissioners of elementary district requirements; inserted "separately for all elementary school districts" in the first sentence of the next to last paragraph; substituted "joint district" for "joint high school district" before "levy requirements" in the same sentence; inserted "for elementary district and" near the end of the same sentence; inserted "a joint elementary district or" before "a joint high school district" near the beginning of the final paragraph; substituted "district ANB of the joint district" in the final paragraph for "high school ANB of the joint high school district"; and made minor changes in phraseology.

75-7214. Housing and dormitory fund. The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of section 75-8211 shall establish a housing and dormitory fund. All moneys received from such lease or rental agreements shall be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, or the debt service fund. Whenever the end-of-the-year cash balance of the housing and dormitory fund is more than three thousand dollars ($3,000), such cash balance in excess of three thousand dollars ($3,000) shall be transferred to the general fund of the district.

Any expenditure of moneys from the housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973.

Amendments

The 1973 amendment inserted "or receives moneys under the provision of section 75-8211" in the first sentence of the first paragraph.

CHAPTER 73—PUBLIC SCHOOL FUND, EDUCATIONAL CO-OPERATIVE AGREEMENTS AND GRANTS TO SCHOOLS

Section
75-7303. Acceptance and expenditure of federal moneys for state.

75-7303. Acceptance and expenditure of federal moneys for state. The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government. All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for expenditures consistent with this act and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973.

Amendments

The 1973 amendment substituted "in the state treasury" for "with the state treasurer" in the second sentence; inserted the fourth, fifth and sixth sentences; inserted "of moneys from federal sources under this section" near the beginning of the seventh sentence; and made minor changes in phraseology.

CHAPTER 74—SCHOOL TERMS AND HOLIDAYS

Section
75-7403. School day and week.

75-7403. School day and week. A school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). The number of hours in any one school day for grades four (4) through twelve (12) may be reduced by one (1) hour if the total number of hours in the school week is not less than thirty (30) hours. The number of hours in a school week

may be reduced, in an emergency, with the approval of the board of education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973.

Amendments

The 1973 amendment inserted the second sentence; and substituted "week" for "day" in the third sentence.

CHAPTER 75—SCHOOL ACCREDITATION, CURRICULUM AND ADULT EDUCATION

Section
75-7507. Five-year-old schooling and preschool programs.

75-7501. Standards of accreditation.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7502. Accreditation of schools.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7504. Instruction in junior high schools and high schools.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7507. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be five (5) years old on or before the first grade enrollment closing date established by the district trustees for the school year for which the program is to be conducted. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to section 75-6902, a child must have reached the age of five (5) on or before the first grade enrollment closing date established by the district trustees for the school year covered by the calculation.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of three (3) and five (5) years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973.

Amendments

The 1973 amendment inserted a new subsection (1); designated the language in the former section as subsection (2); deleted references to kindergarten before the references to preschool programs in all three sentences of subsection (2); and reduced the maximum age specified at the end of the first sentence of subsection (2) from six to five years.

75-7509. Conservation education.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7511. State visual, aural and other educational media library.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7517. School library required.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7520. Reporting school library information.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

CHAPTER 76—TEXTBOOKS

Section
75-7604. Textbooks obtained from licensed textbook dealer.
75-7605. Licensing textbook dealers.
75-7607. Notification and processing of complaint against a licensed textbook dealer.

75-7604. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973.

Amendments

The 1973 amendment deleted a second sentence requiring filing of copies in the textbook library maintained by the superintendent of public instruction.

75-7605. Licensing textbook dealers. Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement:

(1) to guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools; except, that such prices may be reduced in accordance with this section;

(2) to guarantee that, at no time, shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(3) to reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than two thousand dollars ($2,000) but not more than ten thousand dollars ($10,000). The bond shall be approved by

the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973.

Amendments

The 1973 amendment deleted former subdivision (1) requiring the filing of all textbooks offered with the superintendent of public instruction; renumbered the succeeding subdivisions accordingly; and deleted "when the textbooks are filed" preceding the semicolon in subdivision (1).

75-7606. Repealed.

Repeal

Section 75-7606 (Sec. 398, Ch. 5, L. 1971), requiring licensed textbook dealers to file copies of books offered for sale with the superintendent of public instruction, was repealed by Sec. 4, Ch. 89, Laws 1973.

75-7607. Notification and processing of complaint against a licensed textbook dealer. It shall be the duty of any district or county superintendent to notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(1) offering to supply textbooks without a license as prescribed in section 75-7605;

(2). * * * [Same as parent volume.]

(3) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(4) in any other way, performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. Once the superintendent of public instruction has found that the licensed textbook dealer has violated any provision of this section and he fails to rectify his error within thirty (30) days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973.

Amendments

The 1973 amendment substituted "without a license as prescribed in section 75-7605" for "not filed with the superintendent of public instruction" in subdivision (1); deleted former subdivision (4), relating to books inferior to the sample filed with the superintendent; renumbered former subdivision (5) as (4); and made a minor change in style.

Repealing Clause

Section 4 of Ch. 89, Laws 1973 read "Sections 75-7606 and 75-7611, R. C. M. 1947, are repealed."

75-7611. Repealed.

Repeal

Section 75-7611 (Sec. 403, Ch. 5, L. 1971), requiring the superintendent of public instruction to supply a list of textbooks on file with him to all district and county superintendents, was repealed by Sec. 4, Ch. 89, Laws 1973.

CHAPTER 77—VOCATIONAL AND TECHNICAL EDUCATION

Section
75-7709. Sources of financing for post-secondary vocational-technical center budgets—board of public education administration.

75-7702. Duties of board of education.

Compiler's Notes

Executive Reorganization Order 5-72, signed by the governor and effective Sept. 15, 1972, established a vocational education advisory council for purposes of this chapter.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7707. Post-secondary vocational-technical center designation.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7708. Program and budget categories, etc.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7709. Sources of financing for post-secondary vocational-technical center budgets—board of public education administration. The total of the budgets approved by the board of public education together with the budget for the cost of state administration of the post-secondary vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:

(1) and (2). * * * [Same as parent volume.]

(3) Designated post-secondary vocational-technical centers shall be eligible to receive such funds from the federal government as the board of public education may provide pursuant to applicable acts of Congress.

(4) The board of trustees of any designated high school district, or county high school district where a post-secondary vocational center is located may be required, as a condition for the construction in such district of a post-secondary vocational center, or any part thereof, to furnish up to fifty per cent (50%) of the amount of funds required for any such construction. The percentage of construction funds to be furnished by such designated district shall be derived, in whole or in part, from any of the following sources:

(a) The sale of bonds issued by such district. Such bonds shall be issued in conformity with the requirements of chapter 71 of Title 75 in the case of high school and county high school district.

(b) Any other funds available to such district which may be legally and properly applied toward such construction.

(c) The reasonable value of land, buildings, fixtures or equipment furnished by such district, subject to the approval of the board of public education.

(5) If the aggregate financing provided by sources of revenue in (1), (2) and (3) does not provide one hundred per cent (100%) financing of the maximum approved, state-wide budget, the remaining deficiency shall be

financed from any state funds appropriated by the legislature for post-secondary vocational-technical education.

The board of public education shall direct the distribution of the funds specified in subsections (1), (3), and (5) of this section on the basis of the budgets approved by the board of public education. The funds earned by the mill levy specified in subsection (2) of this section shall be credited by the county treasurer to the post-secondary vocational-technical center fund.

The board of public education shall determine the amount of financing available from these five sources of revenue and may approve budgets for maintenance and operation, construction and ancillary services. The aggregate amount of the budgets so approved by the board of public education for post-secondary vocational-technical centers shall not exceed the moneys determined to be available.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board throughout the section; inserted subdivision (4); renumbered former subdivision (4) as (5); inserted "in (1), (2) and (3)" in subdivision (5); substituted "five" for "four" before "sources of revenue" in the first sentence of the final paragraph; and made minor changes in phraseology.

75-7710. Local administration.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7713. Waiver of tuition, etc.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7714. Pupil fees and disposition of collected fees.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7715. Lease or purchase of state property, etc.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

CHAPTER 78—SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN

Section
75-7810. No tuition when attending a state institution.

75-7802. Conduct of special education, etc.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7810. No tuition when attending a state institution. When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district or county, whichever is applicable, wherein the

parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of section 75-7201 or section 75-7808, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 45 and once by Ch. 91. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 45, Laws of 1973, inserted "including summer sessions" in the second sentence.

Chapter 91, Laws of 1973, inserted "or county, whichever is applicable" in the first sentence.

CHAPTER 79—TRAFFIC EDUCATION

Section
75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration.

75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration. The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction; provided that the reimbursements to districts shall be based upon the number of pupils, who in a given school fiscal year, complete an approved traffic education course including both the classroom instruction and behind-the-wheel driving.

Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include development, printing, and distribution of essential materials; preparation of teachers of traffic education; state supervision of the program; and any and all other activities deemed necessary by the superintendent of public instruction.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973.

Amendments

The 1973 amendment deleted from the second paragraph a final sentence limiting the amount deducted to $24,000 annually.

CHAPTER 80—SCHOOL FOOD SERVICES

Section
75-8007. Pupils in state institutional schools included.

75-8002. Acceptance, expenditure and administration, etc.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-8007. Pupils in state institutional schools included. The provisions of sections 75-8002 through 75-8006 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973.

Title of Act

An act to include pupils in state institutional schools meeting eligibility requirements in the school food services program.

CHAPTER 81—COMMUNITY COLLEGE DISTRICTS

Section
75-8107. Election of trustees—districts from which elected—terms of office.
75-8113. Qualifying and organization of board of trustees.
75-8122. Sources of financing for and types of capital expenditures.

75-8103. Supervision by board of regents.

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

75-8106. Call of community college district organization election, etc.

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

75-8107. Election of trustees—districts from which elected—terms of office. The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven (7) trustees shall be elected at large, except that should there be in such proposed community college district one (1) or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder or [of] the proposed community college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the population of the proposed district, then four (4) trustees shall be elected from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed community college district. If the trustees are elected at large throughout the entire proposed community college district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years, and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the

trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years, and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "population" or "census" for "school census" or "total school census" in three places.

Repealing Clause

Section 15 of Ch. 137, Laws 1973 read "Sections 75-5708, 75-5810, 75-5936 through 75-5938, and 75-6909 through 75-6911 are repealed."

75-8113. Qualifying and organization of board of trustees. Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of education, the board of trustees shall be organized by the election of a president and vice-president and a secretary; said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college facilities are located.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "article XIX, section 1, of" before "the constitution of Montana" at the end of the first sentence.

75-8122. Sources of financing for and types of capital expenditures. The board of trustees of any community college district is hereby vested with the power and authority to:

(1) to (3). * * * [Same as parent volume.]

(4) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this title.

The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys for the purposes of this section and to repay such obligations from the various revenues of the college.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973.

Amendments

The 1973 amendment substituted subdivision (4) for a subdivision authorizing an additional tax levy not exceeding ten mills; deleted "from the federal government" after "to accept or borrow moneys" in the final paragraph; and added "and to repay such obligations from the various revenues of the college" to the end of the section.

CHAPTER 82—SCHOOL SITES, CONSTRUCTION AND LEASING

Section

75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure.
75-8206.1. Department of administration to co-ordinate review of construction plans.
75-8211. Leasing district property and disposition of any rentals.

75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure. Whenever the trustees of any district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real or personal property in accordance with this section and without conforming to the provisions of section 75-8204.

The trustees of any district shall adopt a resolution stating their intention to sell or otherwise dispose of district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district. When such a resolution is adopted, the trustees shall set the date of the trustees meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for five (5) days after the date of its adoption.

Any taxpayer may appeal the resolution of the trustees, at any time within five (5) days after the date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest, convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of such real or personal property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973.

Amendments

The 1973 amendment extended this section to personal property by inserting "or personal" before "property" throughout the section.

75-8206.1. Department of administration to co-ordinate review of construction plans. All school construction plans requiring state review and approval shall be submitted to the department of administration for ap-

proval. The department of administration shall be responsible for coordination of school construction plan review and approval required by any other state agency.

History: En. Sec. 1, Ch. 49, L. 1973.

Title of Act

An act to centralize review of school construction plans in the department of administration.

75-8211. Leasing district property and disposition of any rentals. The trustees of any district shall have the authority to rent, lease, or let any buildings or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting shall be deposited to the credit of the housing and dormitory fund or that fund which finances the cost of maintaining such real property.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973.

Amendments

The 1973 amendment inserted "the housing and dormitory fund or" in the second sentence of this section.

CHAPTER 83—MISCELLANEOUS PROVISIONS

Section

75-8308.1. Fire drills to be conducted regularly.
75-8308.2. Number of fire drills required—avoiding severe cold weather.
75-8308.3. Times of drills to vary.
75-8308.4. Drill to sound on fire alarm system.
75-8308.5. Fire department to be called for actual fire.
75-8308.6. Recall signal to be distinct—control of signal.
75-8308.7. Inspection of exits—co-operation with fire department in drills.

75-8308. Repealed.

Repeal

Section 75-8308 (Sec. 492, Ch. 5, L. 1971), relating to fire drills in schools, was repealed by Sec. 8, Ch. 424, Laws 1973. For new law, see secs. 75-8308.1 to 75-8308.7.

75-8308.1. Fire drills to be conducted regularly. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973.

Title of Act

An act to provide procedures for fire drills in schools; and repealing sections 75-8308 and 75-8309, R. C. M. 1947.

75-8308.2. Number of fire drills required—avoiding severe cold weather. There shall be at least eight (8) fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.

History: En. Sec. 2, Ch. 424, L. 1973.

75-8308.3. Times of drills to vary. Drills shall be executed at different hours of the day or evening; during the changing of classes; when the

school is at assembly; during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

History: En. Sec. 3, Ch. 424, L. 1973.

75-8308.4. Drill to sound on fire alarm system. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

History: En. Sec. 4, Ch. 424, L. 1973.

75-8308.5. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: En. Sec. 5, Ch. 424, L. 1973.

75-8308.6. Recall signal to be distinct—control of signal. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

History: En Sec. 6, Ch. 424, L. 1973.

75-8308.7. Inspection of exits—co-operation with fire department in drills. It shall be the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors and other exits are in proper condition and co-operate with local fire department authorities in conducting fire drills.

History: En. Sec. 7, Ch. 424, L. 1973.

Repealing Clause

Section 8 of Ch. 424, Laws 1973 read "Sections 75-8308 and 75-8309, R. C. M. 1947, are repealed."

75-8309. Repealed.

Repeal

Section 75-8309 (Sec. 493, Ch. 5, L. 1971), relating to instruction in fire dangers, was repealed by Sec. 8, Ch. 424, Laws 1973.

CHAPTER 84—ESTABLISHMENT OF MONTANA UNIVERSITY SYSTEM

75-8402. Definitions.

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

75-8408. Bureau of mines and geology—purpose.

Cross-References

Bureau functions transferred to department of natural resources and conservation, sec. 82A-506 (1) (a).

CHAPTER 85—ADMINISTRATION OF UNIVERSITY SYSTEM

Part 1—Regents

75-8501. Powers and duties.

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

CHAPTER 86—FINANCE FOR UNIVERSITY SYSTEM

Section
75-8601. Charges for tuition—waiver of nonresident fees.

75-8601. Charges for tuition—waiver of nonresident fees. The regents may:

(a). * * * [Same as parent volume.]

(b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two per cent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two per cent (2%) of unit enrollment for nonresident students who enroll under provisions of any WICHE sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973.

Amendments

The 1973 amendment deleted a subsection number at the beginning of the section; deleted "at Montana college of mineral science and technology" after "nonresident students who enroll" in the latter part of subdivision (b); substituted "any WICHE sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state" at the end of subdivision (b) for "the WICHE sponsored eight (8) state reciprocal agreement for mineral engineering education"; and deleted a subsection (2) reading, "No nonresident student may be admitted to the exclusion of any resident student."

CHAPTER 87—STUDENTS IN UNIVERSITY SYSTEM

Section
75-8702. Definitions.
75-8706. Student's right to privacy—legislative intent.
75-8707. Contracts waiving right to privacy prohibited.
75-8708. Written notice required for entry to student's room—emergency.
75-8709. Search in accordance with law.
75-8710. Release of student records.
75-8711. Academic records to be kept separate—student's right to examine records.

75-8702. Definitions. Terms used in this chapter are defined as follows:

(1). * * * [Same as parent volume.]

(2) "emancipated minor" means person under the age of eighteen (18) years who supports himself from his own earnings or is married.

(a). * * * [Same as parent volume.]

(3) "minor" means male or female person who has not obtained the age of eighteen (18) years.

(4) and (5). * * * [Same as parent volume.]

(6) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules and regulations on what constitutes adequate evidence of residency status not inconsistent with such court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 397. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 94, Laws of 1973, reduced the age specified in subdivisions (2) and (3) from nineteen to eighteen years.

Chapter 397, Laws of 1973, added subdivision (6).

75-8706. Student's right to privacy—legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety and privacy of a person's residence and the privacy of his records. Intrusions by police and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

History: En. Sec. 1, Ch. 357, L. 1973.

Title of Act

An act requiring Montana colleges and universities to develop procedures to protect a student's right to privacy concerning his place of residence and his college or university records.

75-8707. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973.

75-8708. Written notice required for entry to student's room—emergency. An authorized official of the university or college may not enter the room of a student located at such institution unless he has given the student in writing a notice. An emergency such as a fire or a call for help, or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

History: En. Sec. 3, Ch. 357, L. 1973.

75-8709. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state and nation.

History: En. Sec. 4, Ch. 357, L. 1973.

75-8710. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

History: En. Sec. 5, Ch. 357, L. 1973.

75-8711. Academic records to be kept separate—student's right to examine records. Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature. A student shall have the right to examine all written summaries, descriptions, statements or reports of academic or disciplinary nature which may have been compiled upon him or her.

History: En. Sec. 6, Ch. 357, L. 1973.

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